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Costs: New Rules

THE Rules of the Supreme Court (No. 3), 1959 (S.I. 1959 No. 1958 (L.13)), provide a new code of rules relating to costs. The new rules, which were made on 17th November and laid before Parliament ten days later, come into operation on 1st January, 1960. They revoke most of Ord. 65—the exceptions being a few rules relating to security for costs—and Apps. N and P of the Rules of the Supreme Court, 1883, as well as certain other rules relating to costs. There is a general increase of the costs which may be allowed in respect of contentious business done on or after 1st January, 1960, and a complete revision of the scale of costs under App. N (App. 2 to the new code), with some extension of the discretionary powers of taxing officers. Provision is made for review by a judge of the amount allowed in respect of any item of costs by a taxing officer, even though no question of principle may be involved (r. 35). All but one of the different bases of taxation as between solicitor and client are eliminated; the exception retained is that where the costs are payable out of a fund in which the client and others are interested (r. 28 (3) and (4)). Extended to all district registrars are the powers to tax costs awarded by an arbitrator, and to tax under the Solicitors Act, 1957, the bill presented by a solicitor to his own client in respect of contentious business done by the solicitor (r. 12 (4)).

Equality of the Sexes

SURVIVORS of the Suffragette Movement will no doubt obtain a certain ironical satisfaction in the knowledge that, so successful has their work been the community is gradually imposing upon the fair sex responsibilities comparable to those placed upon mere men. Under the Matrimonial Proceedings (Magistrates' Courts) Bill, published last week and due for its second reading in the Lords next Tuesday, a husband whose earning capacity is impaired through age, illness, or disability of mind or body, may request the court to order his wife to maintain him or their children. The maximum weekly amounts which a magistrates' court may order to be paid for maintenance are raised from £5 to £7 10s. for a spouse, and from £1 10s. to £2 10s. for a child. Each parent may be ordered to contribute to a child's maintenance up to the maximum amount which can be ordered for the child. The Bill consolidates and amends the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, and largely follows the draft Bill included in the Report

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of the Departmental Committee on Matrimonial Proceedings in Magistrates' Courts which was laid before Parliament last January, and upon which we commented at pp. 98 and 207, *ante*. The court's powers and duties in relation to the interests of the children of the parties are widened; the court may order that a child should be committed to the care of a local authority or placed under the supervision of a probation officer or local authority, but an order placing a child under supervision will cease to have effect when the child attains the age of sixteen years. The court will be permitted to treat proceedings for variation of maintenance orders as domestic proceedings (which are heard in private). A magistrates' court and, on appeal, the High Court will be able to make interim orders.

Breach of Contract of Service

ALTHOUGH he has committed a breach of his contract of service, a servant may be entitled to recover his wages in respect of work performed before the commission of the breach. The Court of Appeal took this view in *Parkin* v. *South Hetton Coal Co.* (1907), 98 L.T. 162, where the plaintiff was a putter in the service of the defendant colliery company and his duty was to draw coal in tubs underground. His wages depended on the number of tubs drawn and were payable fortnightly on the Friday following the end of each fortnight. After four days of one period of two weeks the plaintiff refused to work and he was dismissed. The court found that this dismissal was justified but that the plaintiff was entitled to be paid in respect of the four days for which he had worked as each day's wages became due daily, although the payment of them was deferred. However, where there has been a breach on the part of the servant which entitles the master to dismiss him, in addition to his right to terminate the contract, the master may maintain an action for damages against the servant in respect of his breach of contract (see, e.g., *Hanley* v. *Pease and Partners, Ltd.* [1915] 1 K.B. 698 and *National Coal Board* v. *Galley* [1958] 1 W.L.R. 16). These principles appear to have been relevant to a recent case in the Guildford County Court. Two men employed by an aircraft engineering firm took four days off work to "run a book" at the Royal Ascot race meeting. The men were dismissed and they sued to recover wages which they alleged were due to them in respect of several days before they attended the Ascot meeting. The employers counter-claimed for damages for loss of profits and his honour Judge LIONEL JELLINEK gave judgment in their favour, but the amount claimed by the employees on account of wages was deducted from the amount awarded to the firm.

Attempted Sexual Offences

AT 101 SOL. J. 328 the Sexual Offences Act, 1956, was discussed and it was pointed out that, while previous statutes had created specific statutory offences of attempted carnal knowledge of young girls and attempted incest, the new Act referred to the full offences only and did not declare attempts to commit these offences to be specific offences under the Act. It was suggested that this might lead to difficulties about spouses giving evidence for the prosecution, and the defence of a man under twenty-four charged with attempting to have carnal knowledge of a girl under sixteen. It is said in Archbold, 34th ed., para. 4101, that every attempt to commit a felony or misdemeanour is a misdemeanour at common law whether the crime attempted is one by statute or at common law, and it was argued that the statutory defence of a young man under twenty-four and the right of spouses to give evidence under the Sexual Offences Act would not apply to offences which were at common law and not under the Act itself. The very point recently came before STREATFEILD, J., in relation to the defence of a young man under twenty-four charged with having intercourse with a girl under sixteen (*R.* v. *Collier* (1959), 10 C.L. 46). The evidence established that intercourse had been attempted but not completed. The learned judge ruled that the term "an offence under this section" in s. 6 (3) included an attempt to commit an offence under s. 6 and that therefore the statutory defence was open to the accused. While this view may be open to argument, it is submitted with respect that it certainly leads to a common-sense result, as one can assume that Parliament never intended to take away this defence for attempted intercourse when the Sexual Offences Act was passed.

"Serving" in Shops

THE recent decision of the Stratford magistrates as to the meaning of the expression "the serving of customers" is obviously of considerable importance. A firm of house furnishers closed its store at 5.30 p.m., but reopened it from 7.00 p.m. to 9.30 p.m. to allow members of the public to view and ask questions about their goods but not to buy them. Section 2 (1) of the Shops Act, 1950, provides that shops "shall be closed for the serving of customers . . . not later than . . . eight o'clock in the evening" and it was alleged that the opening of the store from 7.00 p.m. to 9.30 p.m. was an infringement of this provision. The magistrates upheld this contention as they believed that they were bound by the decision of the Divisional Court (LORD PARKER, C.J., ASHWORTH and HINCHCLIFFE, JJ.) in *Betta Cars* v. *Ilford Corporation* (1959), reported at p. 834, *ante*. In that case it was held that a shop which was open only for the purpose of viewing goods was nevertheless open "for the serving of customers" within s. 47 of the 1950 Act. Lord Parker, C.J., said: "Where a shop was open for exhibiting goods with prices and terms of sale, and an employee was present, to say that the shop was closed for the serving of customers was plainly wrong." Their lordships distinguished *Waterman* v. *Wallasey Corporation* [1954] 1 W.L.R. 771, where the defendants kept a shop which was lawfully open on Sunday for the sale of motor accessories. Motor cars were displayed for sale in the window with the prices on them and a person, who may have been a prospective customer, was allowed to examine the vehicles. There were discussions but no sale took place and no money passed, and it was held that no offence was committed under s. 47 of the Shops Act, 1950. It seems to us that it is important to remember that these provisions of the 1950 Act were passed for the benefit of those who serve as shop assistants (see the judgments of Ridley, J., in *Willesden Urban District Council* v. *Morgan* [1915] 1 K.B. 349, and DONOVAN, J., in *Waterman* v. *Wallasey Corporation*, *supra*) and, therefore, that any attendance by shop assistants on shop premises as a consequence of the opening of those premises to the public outside the hours permitted by the Shops Act, 1950, will be deemed to be an offence, whether or not the purpose of that opening was the sale of goods.

THE FACTORIES ACT, 1959

THE main purpose of the Factories Bill was to strengthen fire precautions in factories, but amendments were introduced during the passage of the Bill which made it of much wider significance. In the event, the Factories Act, 1959, has made important amendments to the Factories Acts, 1937 and 1948, and made further provisions as to the health, safety and welfare of persons employed in factories or in premises or operations to which those Acts apply. The 1959 Act provided that its provisions should come into operation on such days as the Minister should by order appoint and the provisions considered in this article were brought into operation on 1st December, 1959, by the Factories Act, 1959 (Commencement No. 1) Order, 1959 (S.I. 1959 No. 1877).

Hoists and lifting machines

Section 22 (2) of the principal Act (i.e., the Factories Act, 1937) stipulates that every hoist or lift must be thoroughly examined by a competent person at least once in every period of six months, that a report of the result of every such examination should be signed by the person making the examination and that within fourteen days such report should be entered in or attached to the general register. Section 24 (2) provides that all parts and working gear, whether fixed or movable, including the anchoring and fixing appliances, of every lifting machine (s. 24 (8) defines a " lifting machine " as a " crane, crab, winch, teagle, pulley block, gin wheel, transporter or runway ") should be thoroughly examined by a competent person at least once in every period of fourteen months and that a register should be kept containing the prescribed particulars of every such examination. These provisions are amended by s. 3 (1) of the 1959 Act, which enacts that the person making the report of an examination under them " shall within twenty-eight days of the completion of the examination send to the inspector for the district a copy of the report in every case where the examination shows that the hoist or lift or lifting machine cannot continue to be used with safety unless certain repairs are carried out immediately or within a specified time." The report required to be signed by the person making the examination in compliance with s. 22 (2) of the 1937 Act must now be registered within twenty-eight, as opposed to fourteen, days (s. 3 (2) of the 1959 Act).

Under s. 24 (7) of the principal Act, if any person is employed or working on or near the wheel-track of an overhead travelling crane in any place where he would be liable to be struck by the crane, effective measures must be taken by warning the driver of the crane or otherwise to ensure that the crane does not approach within twenty feet of that place. This subsection imposed an absolute obligation on the employers to produce the result that, in the circumstances stated in the subsection, the crane shall not approach within twenty feet of where the workman is working (*Lotinga* v. *North Eastern Marine Engineering Co.* (1938), *Ltd.* [1941] 2 K.B. 399), but this duty has now been extended by s. 3 (3) of the 1959 Act, which provides that " if any person is employed or working in any place above floor level where he would be liable to be struck by an overhead travelling crane, or by any load carried by an overhead travelling crane, effective measures shall be taken to warn him of the approach of the crane, unless his work is so connected with or dependent on the movements of the crane as to make a warning unnecessary."

Floors, passages and stairs

The obligation imposed by s. 25 (1) of the principal Act was that all floors, steps, stairs, passages and gangways should be of sound construction and properly maintained. In this connection, " 'maintained' means maintained in an efficient state, in efficient working order, and in good repair " (s. 152 of the 1937 Act), and in *Latimer* v. *A.E.C., Ltd.* [1953] 3 W.L.R. 259 the House of Lords decided that an employer was not in breach of this statutory duty because the floor of the employee's workplace had been made slippery by a mixture of rainwater and an oily cooling agent. In the course of their judgments their lordships approved the decision of Somervell, L.J., in *Davies* v. *De Havilland Aircraft Co., Ltd.* [1951] 1 K.B. 50. In that case the plaintiff was employed by the defendant company and while he was walking down a passage leading to the canteen he slipped on a patch of a greasy substance, fell and suffered injury. His lordship had held that the fact that there was a patch of oil on the floor did not amount to a breach of the duty imposed by s. 25 (1) of the Factories Act, 1937, and in both cases the contention that the employers were in breach of their duty at common law to take reasonable care to protect those employed by them from unnecessary risk was also rejected. However, the effect of these decisions has now been substantially reversed by s. 4 of the 1959 Act, which provides that the duty imposed by s. 25 (1) of the principal Act shall be extended by the addition of the provision that floors, passages and stairs " shall, so far as is reasonably practicable, be kept free from any obstruction and from any substance likely to cause persons to slip."

Section 29 (6) of the 1937 Act provides for the examination of steam boilers and their fittings and attachments by a competent person at least once in every period of fourteen months, and also after any extensive repairs, and subs. (7) of that section stipulates how such an examination is to be carried out. These provisions are to be replaced by provisions contained in s. 8 (1) of the 1959 Act, but subs. (2) of that section, which, unlike subs. (1), has now been brought into operation, stipulates that until the coming into operation of subs. (1) the Minister of Labour and National Service may by order grant such exemptions from the requirements of s. 29 (6) of the 1937 Act to such extent and subject to such conditions as may be specified in the order, and any such exemption may extend to any class or description of factory or boiler or any particular factory or boiler. Subsections (3) and (4) of s. 8 of the 1959 Act have also been brought into operation. Subsection (3) enacts that the Minister may by special regulations vary the period of twenty-eight days within which a report of any examination under s. 29 of the principal Act is to be entered in or attached to the register under subs. (8) of that section or a copy of such report sent to the inspector under subs. (11). Subsection (4) of s. 8 of the 1959 Act extends s. 29 (15) of the 1937 Act by providing that s. 29 shall not apply to any boiler belonging to and used by the United Kingdom Atomic Energy Authority.

Lifting excessive weights

In 1957 at least 41,000 accidents occurred in factories as a result of the manhandling of loads, and the word " young " is now omitted from s. 56 (1) of the principal Act. The result of this deletion, which is effected by s. 20 of the 1959 Act,

is that no person shall be employed to lift, carry or move any load so heavy as to be likely to cause injury to him, although the Minister may still make special regulations prescribing the maximum weights which may be lifted, carried or moved by persons employed in factories and any such regulations may prescribe different weights in different circumstances and may relate either to persons generally or to any class of persons or to persons employed in any class or description of factory or in any process. The amendment to s. 56 (1) reinforces the duty which the master owes to his servant at common law. This duty may be illustrated by the decision of the Supreme Court of New Zealand in *Williams* v. *B.A.L.M. (N.Z.), Ltd. (No. 3)* [1951] N.Z.L.R. 893. Employees were instructed that certain barrels were to be rolled from one end of a shed to the other and stacked there with the use of a jigger. In the course of this work the plaintiff rolled a barrel by himself and was injured as a consequence of the strain. He recovered damages as his employers had failed to observe their duty to take reasonable care for the safety of their servant and not to subject him to unnecessary risks. See also *Rees* v. *Cambrian Wagon Works, Ltd.* (1946), 90 SOL. J. 405.

Where the Minister is satisfied that any manufacture, machinery, plant, equipment, appliance, process, or description of manual labour, used in factories is of such a nature as to cause risk of bodily injury to the persons employed, or any class of those persons, he may, subject to the provisions of the principal Act, make such special regulations as appear to him to be reasonably practicable and to meet the necessity of the case (s. 60 (1) of the Act of 1937, as amended by s. 12 (1) of the Factories Act, 1948). This is an important section because it means that "as regards any particular class or description of factory, the Minister has power to increase or diminish the stringency of the statutory requirements, and may substitute other provisions for those of the Act" (*per* Lord Reid in *John Summers & Sons, Ltd.* v. *Frost* [1955] A.C. 740), and s. 21 of the 1959 Act provides that this power shall now be exercisable whether or not there has been any actual use of dangerous materials, appliances or processes in any factory.

Importation of prohibited materials

Section 61 (2) of the Act of 1937 empowered Her Majesty to prohibit by Order in Council the importation into the United Kingdom of articles in the manufacture of which any prohibited material or process was employed, but s. 22 (1) of the 1959 Act provides that this subsection shall now read: "(2) Where by any regulations made under this Act the use of any material or process is prohibited, Her Majesty may by Order in Council prohibit, either absolutely or subject to exemptions, the importation into the United Kingdom of the material or any of the articles in the manufacture of which the material or process has been employed, and any such Order in Council may be varied or revoked by a subsequent Order in Council." Thus the importation not only of the articles but also of the material may now be prohibited.

Exemption orders and regulations

Part VI of the Factories Act, 1937, applies to the employment of women and young persons, but s. 23 (1) of the 1959 Act stipulates that where the Minister is satisfied, on an application made to him in that behalf, that it is desirable in the public interest to do so for the purpose of maintaining or increasing the efficiency of industry or transport, he may, after such consultations as he may think appropriate or as may be required, exempt the employment of persons of or over the age of sixteen from any of the following provisions, except in so far as they relate to mines and quarries, that is to say: Pt. VI of the principal Act, except ss. 99 and 100; s. 1 (3) of the Employment of Women, Young Persons, and Children Act, 1920; and the Hours of Employment (Conventions) Act, 1936. Section 99 of the principal Act relates to the giving of a certificate of fitness for employment in respect of any young person, i.e., a person under the age of eighteen, and s. 100 deals with the power of an inspector to require a certificate of fitness for work where he is of the opinion that the employment of any young person in a factory or in any particular process or kind of work in a factory is prejudicial to the health of the young person or the health of other persons. Section 1 (3) of the 1920 Act stipulates that no young person or woman shall be employed at night in any industrial undertaking, except as permitted under the conventions set out in Pts. II and III of the Schedule to that Act; the 1936 Act imposes restrictions on the employment of women by night in industrial undertakings, and controls the hours of work in automatic sheet-glass works.

An exemption granted under s. 23 of the 1959 Act may extend to the employment of persons generally, of a class of persons or of particular persons, and to employment generally, or any class of employment or particular employment, and may be granted to such extent and on such conditions as may be specified in the instrument by which it is granted and either indefinitely or for such period as may be so specified (s. 23 (2)). However, an exemption under s. 23 extending only to particular persons or a particular employment or to a class of persons or employment defined by reference to particular premises or to work supervised from particular premises, and any exemption under that section for a particular day or particular days only, shall be granted by a special exemption order (s. 23 (3)) and an exemption granted by a special exemption order shall not be for more than one year, although the like exemption may be granted for further periods by further special exemption orders (s. 23 (4)). The Minister must publish in the *London Gazette* such particulars of special exemption orders as he considers appropriate (s. 23 (6)). Any exemption granted under s. 23 of the 1959 Act which is not granted by a special exemption order shall be granted by special regulations, to be known as general exemption regulations (s. 23 (3)).

General exemption regulations may be made by the Minister only—

(*a*) on the application of a joint industrial council, conciliation board or other similar body constituted by organisations which appear to him to be representative respectively of workers and employers concerned; or

(*b*) on the application of a wages council; or

(*c*) on the joint application of an organisation which appears to him to be representative of employers concerned and of an organisation which appears to him to be representative of workers concerned; or

(*d*) on the application of an organisation which appears to him to be representative of employers concerned and after consulting an organisation which appears to him to be representative of workers concerned; or

(*e*) on the application of an organisation which appears to him to be representative of workers concerned and after consulting an organisation which appears to him to be representative of employers concerned (s. 23 (5)).

In this connection, "organisation" includes, in relation to workers, an association of trade unions and, in relation to

employers, an association of organisations of employers and also any body established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking.

Promotion of health, safety and welfare

Section 26 (1) of the 1959 Act provides that the Minister shall promote health, safety and welfare in factories and premises and operations to which the principal Act applies by collecting and disseminating information and by investigating or assisting in the investigation of problems of health, safety and welfare. For the purpose of investigating such problems the Minister may provide and maintain such laboratories and other services as appear to him to be requisite (s. 26 (1)). The Minister is authorised to appoint persons to advise him in connection with his functions under this section and may pay to any such person such travelling and other allowances, including compensation for loss of remunerative time, as he may with the approval of the Treasury determine (s. 26 (2)).

Any power conferred by the Factories Acts, 1937 to 1959, to make regulations, rules or orders, shall include power to make different provisions in relation to different circumstances (s. 27 (1) of the 1959 Act), and any power so conferred to prescribe standards or impose requirements shall include power to do so by reference to the approval of the chief inspector (s. 27 (2)). Any regulation, rule or order made before the coming into operation of s. 27 of the 1959 Act under any power conferred by the principal Act or the Factories Act, 1948, shall, so far as may be necessary, be deemed to have been made under that power as extended by that section (s. 27 (3)). Section 8 (2) of the 1948 Act, which provided that any power to prescribe standards conferred by s. 8 (1) of that Act should include power to prescribe different standards in different circumstances, is repealed (s. 34 (2) of and Pt. I of Sched. III to the 1959 Act).

Sale of machinery

By virtue of s. 17 (2) of the principal Act, any person who sells or lets on hire, or as agent of the seller or hirer causes or procures to be sold or let on hire, for use in a factory in the United Kingdom any machine intended to be driven by mechanical power which does not comply with the requirements of s. 17 (1) (*a*) and (*b*) shall be guilty of an offence. Section 17 (3) enables the Minister to make regulations extending the provisions of s. 17 (2) to machinery or plant which does not comply with such requirements of the Act or of any regulation made thereunder as may be specified in the regulations, and any regulations made under s. 17 (3) may relate to machinery or plant in a specified process. Part VI of the Jute (Safety, Health and Welfare) Regulations, 1948, is an example of the exercise of this power. It is now enacted that an offence under s. 17 (2) or under that subsection as extended under subs. (3) of that section shall, "where necessary for the purpose of conferring jurisdiction on any court to entertain proceedings for the offence, be deemed to have been committed in the place where the machine (or as the case may be the machinery or plant to which the said subs. (2) has been extended) is for the time being" (s. 28 (1) of the 1959 Act). Proceedings for such an offence may be commenced at any time within six months from the date on which evidence, sufficient in the opinion of the Minister to justify a prosecution for the offence, comes to his knowledge, and a certificate purporting to be signed by or on behalf of the Minister, as to the date on which such evidence came to his knowledge, shall be conclusive evidence of such date (s. 28 (2)).

Section 133 of the principal Act imposed an additional penalty in those cases where death or bodily injury resulted from a contravention of the Act, but s. 29 (1) of the 1959 Act stipulates that this provision shall cease to have effect. Penalties for offences for which no express penalty is provided by the principal Act were provided by s. 131 of that Act. However, this section has now, under s. 29 (1), been replaced by the following section :—

"131.—(1) Subject as hereinafter in this Act provided, any person guilty of an offence under this Act for which no express penalty is provided by this Act shall be liable—

(*a*) if he is an employed person, to a fine not exceeding fifteen pounds ;

(*b*) in any other case to a fine not exceeding sixty pounds ;

and if the contravention in respect of which he was convicted is continued after the conviction he shall (subject to the provisions of section one hundred and thirty-two of this Act) be guilty of a further offence and liable in respect thereof to a fine not exceeding fifteen pounds for each day on which the contravention is so continued.

(2) In relation to a contravention which was likely to cause the death of, or bodily injury to, any person, subsection (1) of this section shall have effect as if for the references in paragraphs (*a*) and (*b*) to fifteen pounds and sixty pounds there were respectively substituted references to seventy-five pounds and three hundred pounds."

The maximum penalties provided for by the provisions of the 1937 and 1948 Acts mentioned in Sched. II to the 1959 Act are increased as specified in that Schedule (s. 29 (2)) but the provisions of s. 29 of the 1959 Act do not apply to offences committed before 1st December, 1959 (s. 29 (3)).

Proceedings against actual offender

Proceedings against and the punishment of the actual offender as well as or instead of the occupier or owner are provided for by ss. 136 to 138 of the principal Act, and s. 30 (1) of the 1959 Act stipulates that any reference in these sections to an occupier or owner shall be construed as including any other person liable for an act or default or, as the case may be, charged with an offence. The fine that may be imposed under s. 136 of the 1937 Act on an employed person where the offence is one for which no express penalty is provided shall be that specified in s. 131 of that Act (see above) in relation to employed persons, and it makes no difference that the person primarily liable is not an employed person (s. 30 (2)).

Regulation 59 of the Defence (General) Regulations, 1939, enabled the Minister, by order, to such extent, during such period, and subject to such conditions, as may be specified in the order, to exempt from the Factories Act, 1937, (*a*) any particular premises or operations or class of premises or operations, or (*b*) any class of machinery, plant or process, if he was satisfied in either case that it was expedient so to do for any of the purposes specified in s. 1 (1) of the Supplies and Services (Transitional Powers) Act, 1945. These powers were restricted by the Defence Regulations (No. 2) Order, 1954, but reg. 59 has now been revoked by s. 31 (1) of the 1959 Act. However, s. 31 (1) does not affect the continued operation of any order made under reg. 59, but any such order may be revoked by order of the Minister and shall, in so far as it could have been made under the 1959 Act, have effect as if so made. Any provision made by such an order which could have been made by special regulations under s. 23 of the Act of 1959 (see above) shall be deemed, until the order is revoked, to be contained in such regulations (s. 31 (2)).

Any regulation or order made in the exercise of powers conferred by the 1959 Act shall be made by statutory instrument, except (*a*) an order applicable only to particular persons, premises, boilers, employment, operations or work or to persons employed at particular premises or on work supervised from particular premises; or (*b*) an order revoking an order made otherwise than by statutory instrument (s. 32 (1) of the 1959 Act). Any statutory instrument containing regulations under the Factories Act, 1959, is subject to annulment in pursuance of a resolution of either House of Parliament (s. 32 (2)).

Other provisions of the 1959 Act

The Factories Act, 1959 (Commencement No. 1) Order, 1959, also provides, *inter alia*, that s. 2 (Dangerous substances), s. 5 (Safe means of access and safe place of employment), s. 6 (Dangerous fumes and lack of oxygen) and s. 7 (Explosive dust) of the Factories Act, 1959, shall come into operation on 1st February, 1960. The effect of these provisions will be considered in another article and the remaining sections of the 1959 Act will be examined when they are brought into operation.

D. G. C.

County Court Letter

UNTIMELY ENDS IN COUNTY COURTS

THOSE of us whose main interest in figures is confined to what are usually known as the vital statistics, firmly believe that in the hands of experts they can be made to prove anything. The Civil Judicial Statistics for 1958 do little to modify this view. For instance, they disclose that during the year 1,335,774 summonses were taken out in county courts throughout the country, while only 26,956 cases were actually tried, some two-thirds by judges and the balance by registrars and, in the case of twenty-four, arbitrators. Unless that elusive decimal point has slipped again, this appears to indicate that only some 2 per cent. of all summonses ever get as far as trial.

From this it could be argued that the proportion is insignificant, and that it is therefore hardly worth while having county courts at all. On the other hand, it could equally well be argued that every summons represents a potential trial, and therefore there might have been 1,335,774 trials in 1958 which would have required, on the figures, the efforts of 4,145·66 judges (the ·66 no doubt being paid only ·66 of his salary) and a mere 572·5 registrars.

Whichever argument you prefer to accept, if either, it is certainly interesting to note how very few summonses actually reach trial. Many, of course, come to an end by payment in full or by instalments either agreed between the parties or decided by the court on disposal. Many cases go by default; some are settled, and in at least a few the defendant successfully vanishes and the summons is not served. Finally, a small number reach trial, but fail to stay the course. For one of three reasons they are shot down in full flight. To continue to mix the metaphor, the fatal torpedo is fired in one case by the defendant; in one by the plaintiff himself; and in one by the court.

Sudden death

At the end of the case for the plaintiff, it is open to the defendant to submit that there is no case for him to answer. Generally speaking, the court will not consider his submission unless he agrees to rest upon it and to call no evidence (*Alexander* v. *Rayson* [1936] 1 K.B. 169 (C.A.)) but this rule is not inflexible (*Muller & Co.'s Algemeene Mijnbouw Maatschappij* v. *Ebbw Vale Steel, Iron & Coal Co.* [1936] 2 All E.R. 1363). The court should have regard to all the circumstances and if it appears that expense, time and trouble are likely to be saved, it may decline to impose this condition.

The plaintiff's right to withdraw proceedings is of course well known, but it is perhaps not quite so well known that he can exercise it at any time, and not only before the case starts (*Robinson* v. *Lawrence* (1851), 7 Ex. 128). Every practitioner must have met the case during the hearing of which it becomes fairly obvious that, barring miracles or the judge dropping off, the claim as drawn will fail, though it might have succeeded in another form or with other evidence. In such a case a tactical withdrawal might be considered in order that the plaintiff may live to fight another day, albeit at the cost of having to pay for the first encounter.

Non-suit

The third and most interesting way in which a case can be brought to an untimely end is by the plaintiff being non-suited under Ord. 23, r. 3. The whole question of non-suiting was fully discussed in the recent case of *Clack* v. *Arthur's Engineering, Ltd.* [1959] 2 W.L.R. 916; p. 471, *ante*. Delivering the judgment of the Court of Appeal, Willmer, L.J., traced its history in fascinating detail. In the High Court, it was a power at common law which ceased to exist with the coming into force of the Rules of the Supreme Court of 1883. In the county court, however, it has always been a statutory power, originally created by s. 79 of the County Acts Court, 1846. Shortly after the Supreme Court of Judicature Act, 1873, which contained a provision that in the High Court a judgment of non-suit was a bar to subsequent proceedings, a county court rule to a similar effect was made, but s. 88 of the County Court Act, 1888, restored non-suit to its original glory, and the situation has remained substantially the same ever since.

The position to-day seems to be that at any time until evidence is complete, the plaintiff has the right to ask to be non-suited, though it is perhaps hard to see how this differs, in effect, from withdrawal. After this point in the trial, the court has an absolute discretion either to non-suit the plaintiff or to find for the defendant as it thinks fit. If before evidence is complete the plaintiff is asked whether he wishes to be non-suited and he does not, it seems possible but far from certain that the court can still take this step. The decisions on this point are singularly conflicting.

The report on the statistics is one that well repays the few minutes spent on reading it, if this can be said with due respect. In it one finds all those ingredients so peculiar to and fundamental in English law—the intricacies of a curious procedure; the effect upon it of statute law; and the reconciliation of a number of apparently conflicting decisions. The reader gets the feeling of having stepped into a museum well furnished with items of little contemporary practical value, but great

historical interest. For this reason it is sad to note in the last paragraph the suggestion that no object is served in preserving the remedy of non-suit in the county court any longer. No doubt some day soon it will itself be non-suited.

The last words of the judgment express the opinion that few practitioners to-day fully understand the remedy of non-suit. This article makes no claim to rectify that unfortunate state of affairs, but if any reader is thinking of making a bid for fame by qualifying as the last person to be non-suited, perhaps it will at least give him a brief idea of the rules of the game, set out more fully and most readably in *Clack* v. *Arthur's Engineering, Ltd., supra.*

J. K. H.

Law Reform Series

COMPANY LAW REFORM

LAST week the Government announced its intention to appoint a committee, with Lord Jenkins as chairman,

> "to review and report upon the provisions and workings of the Companies Act, 1948, the Prevention of Fraud (Investments) Act, 1958, except in so far as it relates to industrial and provident societies and building societies, and the Registration of Business Names Act, 1916, as amended; to consider in the light of modern conditions and practices, including the practice of take-over bids, what should be the duties of directors and the rights of shareholders; and generally to recommend what changes in the law are desirable."

The setting up of the committee was largely brought about as a result of public concern over certain aspects of "take-over" bids, and a number of private bodies have already initiated their own inquiries into this subject, no doubt with a view to persuading the Government committee to accept their recommendations. It is fortunate, however, that the Government committee is to have the opportunity of examining all aspects of the law of investment, and although a great part of its labours are bound to be devoted to such topical matters as "take-over" bids and non-voting shares, it can usefully devote some effort to tidying up various points of company law which are neither polemical nor political. It is the purpose of this article to deal with such matters, but before doing so a few observations on the spirit in which the problems of "take-over" bids and non-voting shares should be approached may not be out of place.

"Take-over" bids

It has been a commonplace in the correspondence columns of newspapers recently to find responsible and well-informed persons advocating the control of "take-over" bids by a Government department, such as the Board of Trade. The controls advocated have ranged from requiring circulars distributed by the bidders and the board of the company concerned to be approved by the Board of Trade before publication, to requiring Board of Trade permission before a "take-over" offer may even be made, and the impossible suggestion has even emanated from one quarter that Stock Exchange dealings in the shares of a company which is the object of a "take-over" bid should be suspended while the offer is open. It is not the purpose of this article to offer further suggestions as to the form control might take. However, in formulating and examining the suggestions which have been made, it is well to begin by asking the question: "To what end?" If "take-over" bids are to be regulated, is the purpose of the regulation to be—(*a*) to prevent the removal of boards of directors who have shown themselves competent, or, at least, have not misbehaved themselves (a concept directly in conflict with the Companies Act, 1948, s. 184); (*b*) to prevent the amalgamation of enterprises into huge units (for which there is already some provision in the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948); (*c*) to prevent the combination of radically different types of enterprises under the control of persons who cannot give proper or disinterested attention to each of them; or (*d*) to restrict the profits obtained as a result of "take-overs", whether such profits are obtained by the shareholders who sell their shares to the bidder for more than their previous stock market value, or by the successful bidder himself when he sells the company's assets or turns them to a more remunerative use, or by the parting board of directors who receive the "golden handshake"? Or is the purpose of regulating "take-overs" merely to be to ensure that shareholders who are approached by the bidder are given full and true information about their own company's position, and, if the offer by the bidder is of an exchange of shares, about the company whose shares are offered in exchange?

Even assuming that "take-overs" are to be regulated only in the limited way mentioned in the last sentence for the benefit of shareholders whose shares the bidders seek to acquire, it can be too readily assumed that to prescribe standards of truthfulness for "take-over" circulars, and to give the Board of Trade a power to censor them, will ensure that the shareholders are properly informed before they commit themselves. American experience with the proxy solicitation rules made by the Securities and Exchange Commission (S.E.C.) to deal with a similar problem* has not been encouraging. Merely to require the filing of copies of circulars with the S.E.C., to enjoin the protagonists not to state anything that is not true, to prohibit attacks on the personal integrity of individuals, and to prohibit forecasts of the future profits or dividends of the company and the value of its shares, as the proxy solicitation rules do, leaves a wide field open. Even if the bidder offers shares of another company in exchange for those of the company he seeks to take over, so that under American law he has to file a registration statement (the equivalent of a prospectus) with the S.E.C., the statement merely has to detail particulars about the other company, and so despite the S.E.C.'s power to prevent its circulation if it is untrue or misleading, it offers little useful information to the shareholders to whom it is addressed. It may be objected that our law could go farther than this, and could require the board of directors to circulate a certain minimum amount of information about their company to the

* In America the "take-over" bid by which the bidder offers an exchange of shares is practically unknown, principally because of the tax disadvantages involved. Instead, the bidder will buy up to 10 per cent. of the company's voting shares on the market, and then requisition a general meeting to resolve on the removal of the present directors and their replacement by his nominees, and in his circular to the shareholders the bidder will make known his willingness to purchase their shares at a figure above the current market value if they will give him sufficient proxies to ensure his success at the general meeting.

shareholders when the bid is made, and could require the bidder to circulate similar information about the company whose shares he offers in exchange, and could subject all such circulars to Board of Trade censorship before publication. This would undoubtedly be an improvement on the American position if the Board of Trade's powers were exercised fairly, speedily and effectively, but it would be more than surprising if complaints of bureaucratic punctiliousness, inadequate scrutiny, and above all, delay, which is the death blow to all business transactions, did not become widespread. Before erecting new machinery for control, it is worth while pondering whether the informal, but very informative, channels of information employed by the Council of the Stock Exchange, coupled with its power to suspend dealings in a company's shares, is not sufficient in the vast majority of cases to protect the shareholder who is tempted by a spurious "take-over" offer. However, a requirement that the bidder and the board of the company must circulate a certain minimum amount of information might well prove useful, even without Board of Trade censorship. The vast majority of "take-over" bids are genuine and are honestly conducted, but naturally neither the bidder nor the board of directors are likely to disclose more information than suits their case unless the law requires them to do so. Statutory regulation of circulars may not prevent dishonest men from continuing to be dishonest, but it will ensure that honest men and, what is probably equally as important, their professional advisers, know just how much of the unfavourable side of their case must be published.

The present law in respect of "take-over" circulars is woefully deficient. Even if the bidder's circular offers an exchange of shares to be issued by another company, it is not a prospectus, and so need not disclose the information about the other company which a prospectus would have to contain (*Governments Stock and Other Securities Investment Co., Ltd.* v. *Christopher* [1956] 1 W.L.R. 237). Admittedly, no circular by the bidder can be sent out at all without Board of Trade consent, unless it is sent out on the bidder's behalf by a member of a recognised stock exchange or by certain other persons (Prevention of Fraud (Investments) Act, 1958, s. 14), but since the bidder's circular is always sent out over the signature of a stockbroker who belongs to a recognised stock exchange, the Board of Trade's powers are ineffective in practice.

Non-voting shares

In considering the suggestion, which has received considerable support, that all shares, or at least, all equity shares, should by statute carry voting rights, four points deserve attention. First, one has to define the classes of shares which are to carry inalienable voting rights (e.g., if preference shares may be made voteless, may participating preference shares and preferred ordinary shares be similarly treated?), and one also has to prescribe the proportion of voting power which different classes of shares may carry (e.g., it is useless giving voting rights to ordinary shareholders if the promoters may allot themselves deferred shares with a cumulative voting power greater than that carried by the ordinary shares). Secondly, it must be remembered that not all investors in equity shares want voting rights, and many value the few shillings' discount at which "A" ordinary shares sell below ordinary shares with voting rights as worth more than the voting rights themselves. Thirdly, any scheme creating inalienable voting rights would drive many companies into raising further capital in the form of debentures with, probably, a right to participate in profits so as to attract the equity investor. This has been the experience in those states of the U.S.A. where statute has regulated voting rights. Fourthly, and finally, any statutory scheme could be made ineffective by shareholders selling their voting rights to those who wish to control the company. At present this is perfectly lawful (*Puddephatt* v. *Leith* (No. 1) [1916] 1 Ch. 200), but in those states of the U.S.A. where there is statutory regulation of voting rights, it has been found necessary, as it would be found necessary here, to buttress the original provisions by limiting the length of time for which irrevocable proxies may be given, and by outlawing such evasive devices as the voting trust by which shareholders transfer their shares to trustees who are carefully selected because of their willingness to vote in accordance with the wishes of the persons who wish to control the company.

Shares of no par value

The Gedge Committee which reported in 1954 (Cmd. 9112) advocated that companies should be permitted to issue shares with no par value, and the only real obstacle to legislation for this purpose has been the opposition of those who, for political or sectional reasons, wish to represent the return received by shareholders on their investment as being the percentage of the nominal value of their shares at which the dividend is expressed, instead of the yield on the current market value of the shares, which is the true measure. There is no logical reason why no par value shares should not be permitted; the Gedge Committee has adduced enough arguments to convince anyone of this. A few further advantages which would result from them being introduced would be: (*a*) it would no longer be necessary to have a share premium account; the shares would appear in the balance sheet at the total amount paid to the company for them in cash or in kind, and any element of premium would be included in such "paid-up capital"; (*b*) it would be unnecessary to issue bonus shares when the market value of each share became too great for it to be easily saleable; instead each share would be split into two, three or four, in the same way as the units of unit trusts are sub-divided in the same circumstances; and (*c*) if the company suffered a loss of assets, it could be made possible for it to reduce its "paid-up capital" by resolution of the shareholders without going through what is at present the formality of obtaining the sanction of the court; such a facility, however, should be subject to the proviso that if the company later realised the assets for more than their written-down value, the surplus should be deemed to be "paid-up capital," and should not be distributable as a dividend. The difficulties in the way of introducing no par value shares arising from revenue law are insubstantial. The only one of significance is that at present capital stamp duty at the rate of 10s. per cent. is paid on the nominal capital of a limited company, and a company which issued no par value shares would have no nominal capital. In the case of no par value shares, however, there could easily be substituted for nominal capital the total amount which the company takes power by its memorandum of association to raise by issuing shares, and duty could be paid on that figure.

Share transfers

After an unusually busy period of activity during and since the general election, members of the Stock Exchange are finding themseves overburdened with the amount of paper work involved in transferring registered shares from seller to buyer, and are very sensibly examining whether the present procedure could not be simplified. Much of

the procedure, of course, results from the rules and practices of the Stock Exchange itself, and it would be impertinent for a mere lawyer to suggest reforms in that field. But there are also some points of law involved to which the new Government committee could usefully turn its attention.

At present there are four stages in the transaction of selling and transferring registered shares, namely: (*a*) entering into the contract to sell; (*b*) the seller executing an instrument of transfer and, if necessary, procuring its certification by the company or the Secretary of the Share and Loan Department of the Stock Exchange; (*c*) the seller delivering his share certificate and the instrument of transfer, or, alternatively, the certificated transfer, to the buyer in return for the purchase price; and (*d*) the buyer sending those documents to the company and being registered by it as the holder of the shares he has bought. How can this procedure be simplified or shortened? The obvious answer is a wider use of the share warrant to bearer, a form of security well known on the European stock exchanges, but one which the Government of this country has persistently discouraged since the war by exchange control legislation and otherwise. Share warrants are usually in sufficiently low denominations for a seller to be able to sell even a small part of his holding without having to split a warrant, that is, without having to surrender it to the company for two new warrants, one for the shares he is selling, and the other for those he retains. Consequently, the stages on the sale of shares represented by warrants can be reduced to two, namely, entering into the contract to sell, and completing the sale by the seller delivering the appropriate warrants to the buyer in return for the purchase price, whereupon the title to the shares passes to the buyer.

An even more revolutionary idea has been tried experimentally in the United States to simplify dealings with registered shares. It is a common practice in America for shares to be registered in a "marking name," that is, in the name of a bank or stockbroker, and for the beneficial owner of the shares to hold the share certificate with a form of transfer endorsed on it and executed in blank by the "marking name" so as to enable the beneficial owner to sell the shares. The experiment recently carried out by a New York bank has carried this practice further. The bank is registered as holder of the shares and retains the share certificate itself, and it merely issues a trust note to the beneficial owner acknowledging that it holds so many shares in a certain company on his behalf, and that he may transfer his right to them by endorsing the trust note, or by splitting the note into two and endorsing the new note for the shares he is selling to the buyer. The value of this scheme is that no entry need be made in the company's share register each time shares are sold, and the records kept by the bank itself are much simpler than a share register. The bank holds the shares registered in its name in much the same way as it holds cash paid into its customers' bank accounts, that is, it does not aggregate the shares to which each beneficial owner is entitled and appropriate them to him, but holds all the shares of a particular class in trust for the beneficial owners thereof in common, and simply credits each beneficial owner with the number of shares to which he is entitled. Consequently, recording the transfer of shares held by the bank from one beneficial owner to another is as simple an operation as clearing a cheque drawn by one of its customers in favour of another customer.

One objection to the simplification of share transfers by the issue of trust notes in the way indicated above would no doubt be the loss of revenue to the Government in respect of the *ad valorem* stamp duty payable on share transfers. Oddly enough, a means of overcoming this objection already exists. By the Stamp Act, 1891, s. 115, a company may enter into a composition agreement with the Inland Revenue by which it pays an *ad valorem* duty on its issued share and loan capital half-yearly in exoneration of the duty normally payable on transfers of its shares and debentures. If the rate of duty were raised from the present low rate of 2s. per cent. per half year (which is based on the assumption that the company's share and loan capital is turned over completely only once every ten years), to a rate which more accurately reflects the velocity of circulation of shares which are likely to be represented by trust notes, there would be no obstacle from the revenue point of view.

Debentures

Four matters in connection with debentures deserve consideration by the new Government committee. The first is whether the time has not now come when the duties of the trustees of trust deeds to secure issues of debentures should not be statutorily defined. At present their obligations are the same as those of trustees under any other kind of trust, despite the obviously special nature of the subject-matter and purpose of a trust to secure debentures, and in practice they confine themselves to taking custody of title deeds and other documents relating to property of the company which is charged with payment of the debenture debt, and to taking a merely passive part in litigation instituted by debenture-holders to enforce their security. As the Cohen Committee pointed out in their report (Cmd. 6659, para. 61), the appointment of trustees may lead investors to believe that they have been appointed to supervise the company's activities and to take prompt steps to enforce the debenture-holders' security when it is likely to be jeopardised by the continued carrying on of the company's business. Either trustees should be subjected to statutory duties to supervise and to protect the security, or statute should facilitate the issue of debenture stock without the need to appoint trustees at all, a need which exists at present for purely technical reasons.

The second matter is the question whether a standard form of debenture and debenture trust deed could not be appended to the Companies Act to serve the same purpose as Table A does in respect of a company's articles of association. The standard form would not be obligatory, but it would result in a shortening of trust deeds and debentures (the majority of whose clauses are copied without variation from precedent books), and would leave these documents to deal with such essential matters as redemption dates, rate of interest, the maximum number of debentures which may be issued, and the amount of unsecured indebtedness and indebtedness secured by charges ranking before the debentures which the company may incur.

The third matter is one which is rarely important during a period of prosperity, such as at present, but which could become significant in the event of a slump. When a company fails it often happens that a great part of its current assets, which the debenture-holders take to meet their claim, has been bought on credit, and the unpaid sellers are postponed for payment of their debts until after the debenture debt has been paid in full. This was at one time put forward as a reason for refusing to recognise the validity of floating charges (*Russell* v. *East Anglian Rly. Co.* (1850), 3 Mac. & G. 125, *per* Lord Truro, L.C.), and even since they have been

recognised, the court has often expressed abhorrence at having to treat the unpaid sellers in so unfair a fashion (e.g., Buckley, J., in *Re Alfred Nelson & Co., Ltd.* [1906] 1 Ch. 841, 844–846, and in *Re Crigglestone Coal Co., Ltd.* [1906] 2 Ch. 327). The compulsory registration of debentures with the Registrar of Companies has not improved the lot of the trade creditors, who often cannot afford the delay involved in searching the register before accepting an order to supply goods to the company. A possible solution may be to require a company to disclose to every person who sells goods to it on credit: (*a*) the total amount of its indebtedness secured by floating charges on the whole or a substantial part of its assets; and (*b*) the total value of its current assets as shown in its last balance sheet and the date of its last balance sheet. The seller would then at least be warned of the risk he runs in supplying goods on credit.

The fourth and final matter is a technical but important one. By the Companies Act, 1948, s. 95 (2) (*c*), there has to be registered at the Companies Registry charges created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale. This invokes the complicated definition of a bill of sale in the Bills of Sale Act, 1878, but it seems fairly clear that ordinary commercial transactions, such as charging goods with payment of a bank advance to enable the buyer to pay the purchase price and depositing the bill of lading, consignment note or invoice with the bank as security, does not involve a bill of sale requiring registration. The matter should be clarified, however, either by requiring all charges on goods to be registered, or by specifying expressly which charges are exempt.

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Common Law Commentary

UNFAIR COMPETITION AND PASSING-OFF

The decision in the "Spanish Champagne" case is one of some moment (*J. Bollinger and Others* v. *Costa Brava Wine Co., Ltd.* (1959), *The Times*, 14th November). For although the idea of "unfair competition" has often been advanced in argument before the courts, and received mention by the judges in their judgments, it has been generally accepted that the only remedy (leaving aside the action for slander of title or slander of goods) is the remedy known as "passing-off," and that the basis of such an action is the likelihood that the public will be deceived into thinking that the goods of the defendant are goods of the plaintiff.

The courts have sometimes regarded the action of passing-off as the remedy for the invasion of a right of property in a trade name or trade mark—being part of the goodwill of the plaintiff's business and so a right of property—or as a remedy for a personal right not to be injured by conduct analogous to deceit (cf. *Millington* v. *Fox* (1838), 3 My. & Cr., with *Croft* v. *Day* (1843), 7 Beav. 88). Of these two aspects of the matter they have come down on the side of a property right rather than a personal remedy in deceit. Consequently, an intention to deceive does not have to be proved in a passing-off action.

Use of another's mark which does not deceive

Danckwerts, J., has boldly taken the step of, in effect, creating a new remedy for unfair competition to cover the case where one trader uses a name or mark which may be said to be the property of another, even though it cannot be said that any deception of the public arises. Thus, the use of the expression "Spanish Champagne" is an appropriation of the goodwill attaching to the word "Champagne" which describes a well-known type of French wine. A person wishing to buy Champagne may be induced to buy "Spanish Champagne" in the belief that he is getting a wine similar to if not equal to French Champagne—and he may indeed be getting a wine of that quality. Nor is he deceived into thinking that he is buying a French wine. None the less, he buys the Spanish Champagne because of the goodwill which attaches to the word "Champagne" and so it can be said that the purveyor of Spanish Champagne has appropriated to himself the goodwill attaching to the word "Champagne."

His lordship was concerned only with a point of principle arising out of certain assumptions of fact which did not necessarily represent the true facts of the case. But making the assumptions—that the plaintiffs carried on business in a geographical area identified and known as Champagne; that their wine was produced from grapes grown in that area; that it had for a long time been known to the trade as "Champagne"; that it had acquired a high reputation; that persons who ordered Champagne (or saw it advertised) would expect to get wine produced in that geographical area from grapes grown there; and that the defendants produced a wine not produced in the geographical area but sold under the name of the geographical area—his lordship said that "the taking of the name of a product which was associated with growers in a different district appeared *prima facie* to be a reprehensible course of conduct, but whether it was actionable must depend on principle and authority."

Novelty no defence

His lordship nevertheless rejected the argument that, before a person could recover for the loss which he suffered from another person's act, it must be shown that his case fell within the class of actionable wrongs. "But the law might be thought to have failed if it could offer no remedy for the deliberate act of one person which caused damage to the property of another. There were such cases, of course, but they occurred as a rule when the claims of freedom of action outweighed the interests of other persons who suffered from the use which a person made of his own property," said the learned justice, and he went on to add that there seemed no reason why licence should be given to a person, competing in trade, who sought to attach to his product a name or description with which it had no natural association, so as to make use of the reputation and goodwill which had been gained by a product genuinely indicated by the name or description.

That being the principle, the authorities clearly showed that the right of action known as "passing-off" was an action to protect a right of property in the nature of goodwill. The problem presented by the case was therefore whether an interference of this kind with a right of property was actionable

although no earlier comparable case was reported. In deciding that the claim could be supported, his lordship adopted the well-known principle that novelty alone is no defence.

Actions only between traders

The judge pointed out that, although the well-known action of passing-off involved the use of a name or get-up which was calculated to cause confusion with the goods of a particular rival trader, the law had been more concerned with unfair competition between traders than with the deception of the public which might be caused by the use of the name of another trader or an imitation of the get-up of his goods. For this action was not one brought by any member of the public as such who was deceived, but by the trader whose trade was likely to suffer from the deception practised on the public but who was not himself deceived at all. Hence the present claim by one trader against another which was also brought by a trader who was not deceived gave protection to the property of the aggrieved trader—his goodwill—against a different form of " unfair competition " : passing-off being itself a form of unfair competition.

Group trade names

It must not be overlooked that the circumstances of this case are somewhat special. Where a name is used by one particular trader as a trade name his rights are normally protected by a passing-off action, or, if he registers his mark or name, by an action for infringement of the registered mark. Where a name is used by more than one person in relation to goods, that name is in great danger of becoming " in the public domain " so as to be a mere description of the goods and no longer distinctive, except that where it is a registered trade mark it is protected from becoming regarded as non-distinctive through common use by s. 15 of the Trade Marks Act, 1938.

In the present case the defendants were entitled to argue that "Champagne" had become a descriptive term of a type of wine and no longer distinctive of the goods of any particular wine-grower. But Danckwerts, J., was satisfied that there was authority for saying that the plaintiff need not have an exclusive right to the mark if the defendant had none at all. The basis of this view must be that the use of the word " Champagne " is not a mere description of the type of goods but is the use of a term indicating the geographical area from which goods emanate. Consequently, the word was not in the public domain or otherwise non-distinctive, and on that ground his lordship was entitled to say that the defendants did not have any right to use the word.

Real Scotch

There is little doubt that most people will on the whole welcome the decision. There are a good many trades that depend on the geography of the factory or farm as part of the goodwill attaching to the goods: Harris tweed, Scotch whisky, Devonshire cream and cider, and a host of others. On the other hand, presumably " real Scotch Haggis " may be made in Birmingham since " Haggis " is not something necessarily made in Scotland, and the adjective "Scotch" may be intended to refer to (and be taken as indicating) the origin of the recipe. But there are probably some geographical words that have almost lost their distinctiveness and become merely descriptive. What about Sherry, for example ?

L. W. M.

Landlord and Tenant Notebook

IRREVELANCE IN NOTICE

THE decision in *Silvester* v. *Ostrowska* [1959] 1 W.L.R. 1060 ; p. 940, *ante*, concerned a case with some unusual features. First, the claim was under a thirty-one years (less three days) lease of property in London which contained tenant's repairing covenants, a covenant to insure, covenants against offensive trades, and a covenant to inform the lessor of any assignment, but no covenant against or restricting alienation. It did contain the usual forfeiture clause. Then, though the landlord had served a forfeiture notice alleging, *inter alia*, breaches of the repairing covenant and duly notifying the tenant of her rights under the Leasehold Property (Repairs) Act, 1938, the tenant did not serve a counter-notice. Next, the landlord's notice specifically alleged a breach of covenant by sub-letting the premises into three dwellings and one shop. Lastly, the writ issued claimed damages for disrepair but did not claim forfeiture.

It was after the plaintiff had obtained judgment in default of defence that the tenant or her advisers became alive to the possibility of exploiting the reference to sub-letting, and the judgment was then set aside and the proceedings transferred to an official referee. It became his first duty to determine the question of the validity of the notice, and, in upholding it, Mr. Percy Lamb, Q.C., considered three authorities which had been cited to him. I propose to say something about these, taking them in chronological order.

Matters outside covenant

In *Guillemard* v. *Silverthorne* (1908), 99 L.T. 584, a landlord had served a forfeiture notice which (*a*) alleged breaches of (i) a general covenant to repair, which the lease did contain, and of (ii) two covenants to paint, which it did not contain, and (*b*) called upon the tenant to remedy the breaches by work which included work not referable to the general covenant.

In those days reports told us more about the arguments advanced on behalf of the parties than they do nowadays, and it is interesting to note that it was Mr. Edgar Foa who appeared for the defendant and who pointed out that the lumping of the dilapidations together made it impossible for the defendant to know what he was expected to do, and that some of the work in the schedule could only be referred to the non-existing covenants to paint.

The case was not the first (nor did it prove to be the last !) in which the requirements of a valid forfeiture notice had come under examination. For example, *Fletcher* v. *Nokes* [1897] 1 Ch. 271 had decided that particulars of disrepair must be given in such detail that the lessee can understand what is complained of, and therefore what he has to do in the way of remedying the breach. The plaintiff sought to rely on two decisions. One was *Lock* v. *Pearce* [1893] 2 Ch. 271 (C.A.), and the other the recent *Pannell* v. *City of*

London Brewery Co. [1900] 1 Ch. 496. But the defect alleged in the one was that surveyor's fees and costs had been claimed, in the other that the breaches had not been committed at all; and Ridley, J., held that as the notices, as far as setting out *the covenants* was concerned, did agree with the terms of the lease, the two authorities did not apply. In the case before him, what was valid could not be separated from what was invalid.

But in *Silvester* v. *Ostrowska*, Mr. Percy Lamb held that such separation was possible; a non-existing breach differed from a non-existing covenant, a claim based on an alleged covenant differed from one for which there could be no justification in law alone. *Guillemard* v. *Silverthorne* was distinguishable accordingly.

Rights of property

There was, however, another, and perhaps weightier, reason for distinguishing *Guillemard* v. *Silverthorne*. Forfeiture would defeat the estate, destroying proprietary rights; a claim for damages would not. There was, his honour said, apparently no authority so far on the requirements of a Leasehold Property (Repairs) Act, 1938, notice in point of sufficiency and accuracy.

The reasoning is, I submit, not open to criticism. Forfeiture notices came into existence when statute law (the Conveyancing Act, 1881, s. 14; now the Law of Property Act, 1925, s. 146) took over the leaning-against-forfeiture functions of equity. Provisoes for re-entry were considered as provisions for security, and the tenant who had incurred a forfeiture was to be given an opportunity (except in certain specified cases) of making amends. The very existence of the lease is at stake, and the landlord is not to be allowed to exercise his right of re-entering unless he has told the tenant what is wrong, demanding that he put it right.

But the Leasehold Property (Repairs) Act, 1938, though its scope has since been widened by the amendment contained in the Landlord and Tenant Act, 1954, s. 51, was passed at a time when a good many leaseholders were being served with schedules of dilapidations on *in terrorem* lines; their leases might be long, but their purses were short; and it was considered that some protection should be afforded to them. This protection takes the shape of the requirement of a notice by the landlord which makes leave to proceed a condition precedent to further action provided that the tenant serves a counter-notice. (In *Silvester* v. *Ostrowska*, as mentioned, no counter-notice had been served.)

Irrelevant matter

His honour in fact found support for the plaintiff's case in *Pannell* v. *City of London Brewery Co.*, *supra*, in which Buckley, J., had pointed out that before the enactment of the Conveyancing Act, 1881, a tenant was always entitled to particulars of the breaches alleged, but the landlord's case would not collapse if he established some but failed to establish others: the Act had made no difference to the position. "He has not only done that which the statute says he must do, but he has done something in addition. He is, therefore, within the words of the Act; and, for the reasons which I have given, it seems to me that a notice which contains too much is within the reasoning of the Act."

The third authority cited in the judgment was *Fox* v. *Jolly* [1916] 1 A.C. 1. In that case the forfeiture notice had, besides specifying breaches of repairing covenants, called upon the lessee "to examine and repair" specified parts of the houses comprised in the lease, and had gone on to add to the schedule the words "and note that the completion of the items mentioned in this schedule does not excuse the execution of other repairs if found necessary." This gave rise to a very full exposition of the requirements by Lord Buckmaster, who, commenting on the demand for examination and the warning referred to, observed: "No form whatever is provided by the statute as the form in which the notice is to be given. It might be associated with useless and irrelevant matter, and it would none the less be a notice under the section if it was clear from its terms that it was so intended, and if, in fact, it contained in plain language the information the section required."

One might put it this way: whether the position be one affected by the Law of Property Act, 1925, s. 146, or one affected by the Leasehold Property (Repairs) Act, 1938, something must hit the target; but the recipient cannot complain if other missiles have missed or not hit the target, whether or not they were aimed at it.

R.B.

HEADACHE OR HALO?

It must be generally agreed that secretaries are provided by heaven for the sanctification of the men they work for. I have noticed my own dictator, Mr. Smith, growing holier and holier as the years go by; he is now beginning to have the indescribably serene look of one who has endured much and, without boasting, I can confidently claim to have been instrumental in the attainment of his present perfection.

It began a long time ago when he strolled into his office to find me frantically sweeping a rocky pool into a dust-pan.

"Hullo, what's that?" he asked cheerfully.

"It *was*," I replied gloomily, "your coffee."

He made no comment, either then or on the three subsequent occasions when I dropped his cup. When the fourth went the way of all crockery and a new drinking-vessel made its timid debut, he did remark quite genially that I must be running a china factory somewhere. I began to wish that I were.

It was indirectly through washing-up that I provided Mr. Smith with a major opportunity for letting his light shine. After giving a party, during which I had remained comparatively sober, I had taken to whiskey in a somewhat uninhibited manner while tidying my flat and washing the fifty-five glasses that had survived the fray. Next morning I arrived at the office, punctual but pea-green. Mr. Smith unfortunately discovered me sitting trustfully beside a glass of Alka-Seltzer, waiting for a reluctant tablet to dissolve.

"I think," he ventured, "you've put the stopper in water instead of the tablet. It'll take a long time to dissolve."

"Thank you," I replied, with as much dignity as I could muster. (Why, oh why, do they make white foam plastic stoppers that look exactly like tablets?) Mr. Smith was standing with his back to me trying very hard not to laugh. He was still looking out of the window and saying kind things about my party when I rose like a sleep-walker and glided out of the room; possibly the corridor echoed back to him my inaudible whisper of "I'm going to be sick."

A vanishing secretary is clearly of little use to any man. Mr. Smith, resigned as always, suggested that I should

go and lie down. I went. I fell fast asleep and did not re-appear until some time in the afternoon. During my absence Mr. Smith, whose Homeric epithet might well be " busiest of men," occupied his enforced leisure with telephone calls and discussions with his partners, who found him unusually receptive that day.

One of the most unfortunate things about me is that, in those who do not know me well, I inspire confidence. Since I work for a lawyer, the uninitiated cherish the dangerous hope that I may know something about law. I do not. I look at law from the outside, and I find its labyrinthine ways intriguing; I breathe happily in a legal atmosphere, but the words of wisdom dictated by Mr. Smith pass through me on to paper and leave no trace whatsoever of their passing. Hence it will be apparent that the clients who unwittingly place their trust in me are invariably heading for disaster. Discretion, of which I have little, forsakes me entirely when I realise that some poor deluded banker actually believes that I know what I'm talking about.

" Yes, yes, go ahead," I say gaily. (After all, the sun is shining and there is even a bird singing in Throgmorton Avenue.)

" Oh, that's splendid." He sighs with relief. Then a shadow of doubt crosses his face and he adds hesitantly, " Of course, it is a matter of five thousand or so. You're quite sure it's all right? "

" Why ever not? " I laugh. I feel like patting him on the shoulder.

Later in the day I mention the matter to Mr. Smith. He plunges his head into his hands and shudders convulsively for a few seconds. Then he comes up shaking himself like a great dog coming out of the water; he reaches for the telephone and goes into action. Operation Rescue is swift, intensive and effective. I become faintly conscious that calamity has been avoided by a hair's breadth, and, though I have little or no care for the banker's fate, I am distressed to see that at the end of the day Mr. Smith looks slightly more haggard than usual. I reflect that his successful effort at self-control has probably exhausted him as much as all his expenditure of energy on his client's behalf and I resolve that tomorrow all will go well.

Tomorrow comes, and with it an assembly of V.I.Ps. There are a great many of them and they sprawl around the table in Mr. Smith's room so that it is impossible for me to get near him without kicking them out of the way, inadvertently, of course. At one point I am summoned; I come in and stand just inside the door, because I am beginning to think that crossing a newly-ploughed field in wet weather is easier than stumbling over that litter of umbrellas, legs and brief cases. Mr. Smith looks across at me over the recumbent figures of his clients, and says conversationally, " You remember that letter we wrote in April, 1958, to a firm in Lisbon about the administration of the estate of a Portuguese national who died in Scunthorpe? "

I open my mouth—rather like a goat yawning—and, after a pause during which the silence becomes electric, reply " No."

A rustle of embarrassment goes round the room, and I can sense every man's generous sympathy going out towards Mr. Smith. However, he is unperturbed, and the quiet " Thank you " with which he dismisses me has just the faintest hint of laughter behind it.

Undoubtedly a man must have a sense of humour as well as nerves of steel in order to endure the ministrations of a well-meaning secretary. Mr. Smith, who has his biggest trial enthusiastically present every time he touches a bell—or nearly every time—has survived where others would long ago have gone down in despair. Possibly laughter is the secret of his sanctity.

F. H.

HERE AND THERE

LAST STAND

FEELING, as I do, at home with books (although not making idols of them), I have always cherished my bank pass-books, those little leather-bound, leather-clasped compilations in the manuscript of many hands. Over the years they have grown into a library, but now the end is near. For a very long time I have been resisting ever more pressing and insinuating suggestions that I owed it to myself as a progressive and forward-looking citizen of the modern world to accept those splendidly accurate mechanically produced sheets which the bankers have decided are best for keeping customers *au courant* with the state of their debtor and creditor relationship. I resisted because quite genuinely those neat little books suited my temperament far better than the loose leaves (so like hundreds of other loose leaves fluttering about us in almost autumnal profusion) which an absent-minded man may mislay in a dozen places within an hour of receiving them. I rejected them just as I would reject a hat or a tie which did not happen to suit my requirements. Little did I suspect that I was standing full in the path of the March of Progress or how. But now whenever I enter the door of the bank an official appears at my side (as if he had been watching for no one else) to remonstrate with me on my obstinate recusancy, for the defenders of the pass-book are down, it seems, to the last dozen—one sporting gentleman (who, the bank considers, ought to know better) and a handful of senile old ladies.

COMPUTER'S CHANCE

BUT why this sudden urgency? Because so it is decreed by a new dictator of our way of life, the electronic computer. Never did I imagine that one day I should be a piece of grit in the mechanism of a computer or rather (since I still believe in the dignity of the human person) that, as Don Quixote tilted at windmills, I should withstand almost alone the irresistible charge of the armoured electronic divisions. But there is more to it than that, as they revealed to me at the bank, more than a blind craving to be up to date, or to install automation for the sake of automation at all costs, and that more very closely concerns people in general and lawyers in particular. The problem is that scarcely any of the new recruits to the banking staffs in London are capable of writing up a pass-book properly; they can neither read nor count accurately any more. Once, said an official bitterly, he found a girl adding up a column of figures line by line; she had never learnt to add up the column as a whole with one total. The old schools used modestly to teach their pupils the three Rs; now, remarked the official, all they put into their heads is the three Ms—milk, money and music. Another

factor is that literate and competent young people are becoming less and less willing to work in the centre of London; they can find plenty of highly paid employment near their own homes without wasting hours in the human cattle trucks of over-packed transport. And yet, without apparently any veto by the planning authorities, every new scheme for rebuilding vast areas of Central London displays enormous great blocks marked "offices."

FINAL SURRENDER

BUT to return to the interesting problem of juvenile illiteracy, it is not, apparently, a peculiar English problem. As always with everything else from busts to breweries it is bigger in the United States. The Dean of Columbia University Law School recently revealed that one of the great problems there is that few students can write English, even after four years at college studying for bachelor degrees. "One might justly suspect," he said, "that their teachers believed the purpose of language is to conceal thought." So the Law School has to start teaching them composition, operating "as a species of correctional institution." Well did Confucius say that if language is not correct, then what is said is not what is meant; if what is said is not what is meant then what ought to be done remains undone; if this remains undone then morals and arts will deteriorate; if morals and arts deteriorate, justice will go astray; if justice goes astray, the people will stand about in helpless confusion. It is a sinister sequel to half a century's self-conscious pursuit of mass "education" and "culture" probably unparalleled in history that a rising tide of illiteracy should be lapping the very doorsteps of the professsion which is by definition learned. The most sinister possibilities emerge, with human beings, the victims of human ingenuity, not simply conquered by the machines but hypnotised by them and voluntarily abdicating their human functions to the computers and allowing life itself to be reduced to a standardised routine, mechanically predictable. With human activities so reduced and regulated the judicial office itself might well be discharged by a sea-green incorruptible computer. Every factor in the decision would be expressed on a punch-card. The computer would do the rest. With a computer in every court ticking away night and day, there would be no delays, no impatience from the Bench, no argument. The redundant lawyers could be found work on maintenance of the computers. They need not even remember how to read.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Magistrates on Trial

Sir,—I was interested in your reference (p. 902, *ante*) to the difficulty which arises in a county borough when a borough magistrate is summoned to appear before his own colleagues.

A similar position arose here recently when a borough magistrate was summoned to appear before the borough court for a comparatively minor matter. The learned recorder and county court judge are *ex officio* magistrates for the borough, and I invited them to sit as magistrates to hear the case. I borrowed a court clerk from an adjoining division to act as their clerk in order that my office might not be involved in any way.

I am told this somewhat unusual combination found their way about the statute invoked and the Magistrates' Courts Act, 1952, very ably, and were a credit to my borough bench! Fortunately there was no appeal, else the learned recorder might well have had to provide a deputy to hear it.

R. KENNETH COOKE,
Clerk to the Magistrates for the County Borough of Rotherham and Rotherham West Riding Division.

Rotherham.

Modern Precedents

Sir,—I have studied with interest the notes to the form of will contained in your issue of 13th November, and, in particular, that which relates to the direction for cremation after the body of the testator has been used for scientific research (p. 886, *ante*).

The author of that note quite properly points out that a direction for cremation is not in any way binding, but merely gives the executors a lead. I cannot help feeling however that it might be a somewhat embarrassing lead in the given circumstances. As I understand the position disposal of the remains after dissection is, strictly, lawful only by burial. This in fact appears to be one of the points on which the Anatomy Act, 1832, s. 13, clearly requires amendment. If the proposed cremation were in fact to take place within a year of the death the prescribed cremation regulations (notably those concerning medical certification of cause of death) must be fulfilled (see The Disposal of the Dead, by C. J. Polson and others, ch. 3, at p. 27). However improbable any prosecution might be, it would seem that executors should be advised that compliance with the testator's wishes in such a case might well lead them into a technical breach of the law.

D. V. DURELL.

Cambridge.

"THE SOLICITORS' JOURNAL," 3rd DECEMBER, 1859

On the 3rd December, 1859, THE SOLICITORS' JOURNAL contained a variety of advertisements: "Holloway's Ointment and Pills. Shortness of breath, colds, coughs. Thousands of testimonials can be produced to prove the power possessed by these curative remedies in asthma, incipient consumption and all disorders of the chest and lungs. The ointment, well rubbed upon the chest and back, penetrating the skin, is absorbed and carried directly to the lungs where in immediate contact with the whole mass of circulating blood, it neutralises or expels the impurities which are the foundation of consumption, asthma, bronchitis, pneumonia, etc." Another medical advertisement dealt with "Consumption, its Origin and only successful Treatment. Invalids labouring under consumptive maladies and families who have suffered from the ravages of consumption (and what family in the empire is there who has not to deplore a loss caused by this scourge of the human race?) will find a satisfactory answer to the question 'Is consumption curable?' in an original article by Dr. Denis Cronin, M.D., 35 Bruton Street, Berkeley Square, published by the 'Household Physician' and sold in numbers 1d. each." Tailoring was represented by "The Victor New Overcoat 25s., 30s. and 35s., introduced by B. Benjamin, merchant and family tailor, 74 Regent Street, W. The Inverness Wrappers at 25s. and 30s. are unequalled in appearance and value. The suits at 17s., 30s., 35s. and 60s. are made to order from Scotch Heather and Cheviot tweeds and Angolas, all wool and thoroughly shrunk. The two-guinea dress and frock coats, the guinea dress trousers and the half-guinea waistcoats. N.B.—A perfect fit guaranteed."

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and, in general, full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note

Court of Appeal

TRADE ASSOCIATION'S RECOMMENDATION TO MEMBERS NOT TO ACCEPT VARIATION OR CANCELLATION OF CONTRACTS: WHETHER PART I OF RESTRICTIVE TRADE PRACTICES ACT, 1956, APPLIES

***In re* Blanket Manufacturers' Agreement**

Lord Evershed, M.R., Romer and Pearce, L.JJ.

9th June, 1959

Case stated by the Restrictive Practices Court.

The Blanket Manufacturers' Association, a trade association, made a recommendation, accepted by its members as binding, that: "No manufacturer shall agree to the breaking of any contract by reduction of price or other procedure. Should any attempt be made to break or vary the contract the manufacturer shall refuse to accept cancellation or variation and endeavour to obtain completion of the contract. . . . If a manufacturer has good reason to agree a request for the cancellation or variation of a contract he shall not so agree until approval is given by the reference committee. . . ." On a reference by the registrar of the agreement between the members of the association the Restrictive Practices Court ((1959), L.R. 1 R.P. 208) held, *inter alia*, that that recommendation was not a restriction in respect of any of the matters set out in s. 6 (1) of the Restrictive Trade Practices Act, 1956, and that, therefore, they had no jurisdiction to consider it. The registrar appealed. (Section 6 (1) provides that: "This Part of this Act applies to any agreement . . . under which restrictions are accepted . . . in respect of the following matters . . . (*a*) the prices to be charged, quoted or paid for goods supplied, offered or acquired . . . (*b*) the terms or conditions on or subject to which goods are to be supplied or acquired . . . (*c*) the quantities or descriptions of goods to be produced, supplied or acquired. . . .")

LORD EVERSHED, M.R., accepted the argument for the association that the language of paras. (*a*), (*b*) and (*c*) of s. 6 (1) of the Act was, upon its face, directed to the case of a manufacturer about to enter into a trading contract. His lordship said that that did not mean necessarily that the language would not cover other cases, but in each paragraph there was the collocation "*to be*"—"to be charged," "to be applied," "to be produced"—indicating a point of time when the contract was about to be entered into and not when it had already been made. His lordship agreed with the Restrictive Practices Court that the recommendation could not properly or fairly be described as being an agreement under which restrictions were accepted in respect of any of the matters named in those paragraphs, and he would dismiss the appeal.

ROMER, L.J., agreeing, said that the general impression to be drawn from paras. (*a*), (*b*) and (*c*) of s. 6 (1) was that they were directed to, and confined to, agreements regulating the contractual provisions as to the prices, terms and conditions to be incorporated into a contract into which members entered with their customers. Once a member had entered into such a contract, an agreement previously entered into with the other members affecting his rights and obligations under that contract was unaffected by the subsection.

PEARCE, L.J., agreed. Appeal dismissed.

APPEARANCES: *John Megaw*, Q.C., and *W. A. Bagnall* (*Treasury Solicitor*); *Walter Gumbel* (*Brooke, Dyer & Goodwin*, Leeds).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[1 W.L.R. 1148**

RATING: SCIENTIFIC SOCIETIES: LONDON LIBRARY: WHETHER INSTITUTED FOR PURPOSES OF LITERATURE EXCLUSIVELY: SUPPORT BY VOLUNTARY CONTRIBUTIONS

London Library *v.* Cane (Valuation Officer) and Others

Hodson and Ormerod, L.JJ., and Wynn Parry, J.

4th November, 1959

Appeal from the Lands Tribunal.

The London Library, which was founded in 1841 and incorporated by Royal Charter in 1933, is a collection of books of literary merit or of value to scholars and students. The members, who pay an annual subscription, are entitled to take books away for perusal at home. The rights conferred on members in general are strictly personal and cannot be assigned, but certain members are permitted to act as representatives of certain interested bodies, such as government departments or educational establishments, and the books borrowed by such members may be perused in such establishments by persons interested. The bulk of the library's income is provided by the members' annual subscriptions, but in each year there are extraneous receipts in the form of cash donations, legacies and gifts of books, amounting in recent years to from 2½ per cent. to 6 per cent. of the total receipts. Since 1877 the library has enjoyed the benefit of derating under s. 1 of the Scientific Societies Act, 1843, as a body "instituted for purposes of science, literature, or the fine arts exclusively," and "supported wholly or in part by annual voluntary contributions." In 1957 the local valuation officer made a proposal that the library's premises should be rated; this was confirmed by the local valuation court, and an appeal to the Lands Tribunal was dismissed, that tribunal holding that the library did not qualify for exemption under either limb of the section; in particular, it was held that legacies received in different years from different testators were not "annual" contributions, while gifts of books must be excluded from consideration. The library appealed.

HODSON, L.J., delivering the judgment of the court, said that in several cases decided before 1860 and beginning with *Birmingham* (*Churchwardens*) v. *Shaw* (1849), 10 Q.B. 868, a number of libraries had been held to be entitled to the benefits of the Act, but it seemed that in those cases not much attention had been paid to the word "exclusively"; but since *Inland Revenue Commissioners* v. *Forrest* (1890), 15 App. Cas. 334, and *British Launderers' Research Association* v. *Hendon Borough Rating Authority* [1949] 1 K.B. 434 it was plain that to qualify a society must have no collateral purpose. The library had always adhered to the purpose laid down in the charter "to supply the great want in London of a library embracing every department of literature and philosophy and from which books might be taken for use by members to their own homes." The tribunal had found that the only concern of the society was that the books should be returned in good condition, and that the main aim was that books should be supplied to members for such purposes, literary or otherwise, as the members should think fit. On that finding it was impossible to hold that the object was exclusively literary, so that the appeal failed. The question of support by annual voluntary contributions had also been decided adversely to the library, who had relied in particular on legacies, donations of money and presents of books. The tribunal had held that legacies could not be so regarded and, following observations in *Liverpool Corporation* v. *West Derby Union* (1905), 69 J.P. 277, that gifts of books must also be disregarded. But such contributions were those that a library might reasonably expect to receive year by year and upon which it might reasonably rely in meeting expenditure. In considering whether contributions were annual, it was the receiver who had to be considered, and the library received such legacies year by year from different sources. In the case of a library, gifts of books which helped it year by year to fulfil its purpose could properly be regarded as contributions within the section, and the view expressed in the *West Derby* case, *supra*, could not be accepted. However, those sources of revenue, though admissible in principle, were in the material years before the proposal too small in proportion to the total receipts to justify consideration as a partial support of the library, when applying the principles laid down in *Battersea Metropolitan Borough Council* v. *British Iron and Steel Research Association* [1949] 1 K.B. 434. Appeal dismissed. Leave to appeal.

APPEARANCES: *Geoffrey Lawrence*, Q.C., and *Frank Stockdale* (*Gedge, Fiske & Co.*); *J. P. Widgery*, Q.C., and *Patrick Browne* (*Solicitor of Inland Revenue*); *Reginald W. Bell* (*Allen & Son*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 929**

Chancery Division

SOLICITOR'S COSTS: APPLICATION FOR CHARGING ORDER ON FUNDS IN COURT: WHETHER ORDER FOR TAXATION CAN BE MADE AT ANY TIME

Harris *v.* Yarm

Roxburgh, J. 13th October, 1959

Adjourned summons.

A summons was taken out by the solicitors to the plaintiff in a partnership action for a charging order upon a moiety of the funds in court to the credit of the action for the balance of a bill of costs delivered to the plaintiff. More than twelve months had expired since the delivery of the bill. The master made the charging order as asked but, notwithstanding the provisions of s. 72 of the Solicitors Act, 1957, did not order that the costs should be taxed, as he did not think the plaintiff had shown any special circumstances for the granting of such an order as provided by s. 69 (2) (i) of the Act.

ROXBURGH, J., said that the question before him was whether the master ought to have directed a taxaton of the costs of the action as between a solicitor and his client, or whether he ought to have directed that the specified sum should be charged on a moiety of the fund in court. It was a pure question of law, except in so far as the question of what were special circumstances depended, as many judges had said, on the facts of each case. He regretted to say that he thought the master was wrong. Though there was no authority on the point, there was nothng anywhere to suggest that s. 72 was in any way subordinate to s. 69. The words "at any time" must mean what they said—at any time—provided that the right to recover the costs was not barred by any statute of limitation; and that operated both for and against solicitors. To say the court might make orders for taxation of the costs of the action at any time provided that the statute of limitations did not intervene was quite inconsistent with the hypothesis that it could not make them after twelve months "except in special circumstances." The two things could not stand together. The point seemed to him to be clear. This was a point of law affecting the whole of the profession of solicitors. It seemed to him that it was entirely a matter of discretion. Looking at the case as a whole, taking into account those things which he considered were special circumstances and a great many things which might or might not be special circumstances but which afforded a background to the picture, he exercised his discretion (which he believed to be unfettered except by those rules by which every judicial discretion was fettered) in favour of ordering the charge to be for such sum as should be found on taxation to be due to the solicitors.

APPEARANCES: *E. J. T. G. Bagshawe* (*Alfred Bieber & Bieber*).

[Reported by Miss V. A. MOXON, Barrister-at-Law] **[3 W.L.R. 942**

ADMINISTRATION OF ESTATES: PART OF MORTGAGED PROPERTY SPECIFICALLY DEVISED: SPECIFIC DEVISES BY RESIDUARY BENEFICIARY: SALE OF SOME OF PROPERTIES TO DISCHARGE TESTATOR'S DEBTS

***In re* Cohen, deceased; National Provincial Bank, Ltd. *v.* Katz and Others**

Danckwerts, J. 14th October, 1959

Adjourned summons.

A testator, having appointed a bank and his wife executors and trustees, devised to them a freehold property, a house, on trust for one of his daughters absolutely, another on trust for his other daughter absolutely, and his residuary estate on trust for his wife for her own absolute use and benefit. At his death both those houses, together with four out of six houses forming part of his residuary estate, were mortgaged to the bank to secure an overdraft. After the testator's death his wife, the testatrix, by her will appointed the bank her trustee and made a number of specific devises including, *inter alia*, the six houses forming part of the testator's residuary estate, to the two daughters and their children. After her death the bank, on the footing that s. 35 of the Administration of Estates Act, 1925, applied, apportioned the debts comprised in the testator's overdraft equally among the mortgaged properties according to their respective values; it had, however, to have recourse to some of the six freehold properties comprised in his residuary estate, and sold four of them, two for more than their probate value at his death. Subsequently, the bank sold another of the houses, also for more than the probate value, for the benefit of the devisee under the testatrix's will, and, later, to pay the debts of the testatrix, it sold the sixth house. The bank took out a summons to determine, *inter alia*, whether the properties specifically devised by the testator to his daughters were liable to bear proportionate parts of the mortgage debt, whether all six of the properties comprised in the testator's residuary estate should have contributed rateably to satisfy his liabilities, and whether the specific devises and bequests made by the testatrix should abate according to the amount at which they had been valued for probate or the amount for which they were sold.

DANCKWERTS, J., applying *In re Biss; Heasman* v. *Biss* [1956] Ch. 243, said that the two houses given by the testator to his daughters were given by specific as opposed to residuary devise and that that was sufficient evidence of a contrary intention to take the case out of s. 35 of the Administration of Estates Act, 1925, so that those two properties were not liable to bear proportionate parts of the mortgage debt. There was no doubt whatever that the executors were entitled in the course of administration to sell any of those properties the proceeds of sale of which were required for the payment of the testator's debts. The course of events which had occurred might deprive some of the beneficiaries of any benefit under the testatrix's will, unless there was some adjustment out of the available funds so that the burden fell equally upon all the persons who stood to benefit under both wills. The principle which his lordship should apply was that equity would attempt to do justice among all beneficiaries on an equal footing, and, consequently, the beneficiaries ought to bear the burden of the debts which were taken out of the proceeds of sale of some only of the properties equally and rateably among them, and in the same way would have to abate rateably for the purpose of claiming under the testatrix's estate. For the purpose of paying the testator's and the testatrix's debts, contribution should be on the basis of the probate value and the specific devises must also abate on that basis. Order accordingly.

APPEARANCES: *Michael Albery*, Q.C., and *B. S. Tatham* (*Haslewoods*, for *Bosley & Co.*, Brighton); *R. O. Wilberforce*, Q.C., and *A. Campbell* (*Alfred Bieber & Bieber*); *Michael Brown*; *James Mitchell* (*Gilbert Samuel & Co.*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[3 W.L.R. 916**

VARIATION OF TRUST: POWER TO APPLY CAPITAL AND INCOME FOR BENEFIT OF SPECIFIED CLASS INCLUDING SETTLOR'S WIFE: VARIATION TO EXCLUDE ANY WIFE OF SETTLOR: INCOME TAX AND SURTAX

***In re* Clitheroe's Settlement Trusts**

Danckwerts, J. 30th October, 1959

Adjourned summons.

The trustees of a settlement had power thereunder during an "appointed period" to apply any part of the income, and of the capital with certain consents, of the trust fund for the benefit of the "specified class" which included the settlor's wife, with a limitation that the capital of the trust fund should not be reduced below £100. After the appointed period the funds remaining were directed to be held on trust for the specified class in such shares as the trustees should in their absolute discretion appoint. Originally the sum of £100 was settled but further sums were added. Later the settlor and his wife by deed assigned to their daughter any rights they might have under the settlement. By virtue of ss. 21 (4) and 22 (5) of the Finance Act, 1958, the income of any future wife of the settlor would be deemed to be that of the settlor, and the settlor accordingly applied to the court under s. 1 of the Variation of Trusts Act, 1958, for an order approving a proposed settlement in which the definition of "specified class" was varied to exclude any wife of the settlor, and the settlor covenanted to pay to the trustees of the original settlement £100 per annum in each calendar year in which there was in existence a person, other than his present wife, who was the wife or widow and the trustees were directed to hold the sums on trust for such wife or widow absolutely.

DANCKWERTS, J., giving judgment, said that the assignment still left the future spouses of the settlor untouched, as was clear from *Inland Revenue Commissioners* v. *Saunders* [1958] A.C. 285, where the Inland Revenue failed in a claim to surtax under s. 38 (2) of the Finance Act, 1938. There were now provisions in ss. 21 (4) and 22 (5) of the Finance Act, 1958, which undid the effect of the *Saunders* case. There was thus something to be said in favour of the taxpayer in the present case. In *In re Roberts* (1958), *The Times*, 27th February, Vaisey, J., approved a variation in very similar circumstances. This was the case of an immediate discretionary trust and he had to be satisfied that the proposed variation was for the benefit not only of the infant beneficiaries but also of any future spouses of the settlor who were to be excluded. He would approve the variation in principle but would require an affidavit giving evidence of the settlor's means which would show that the covenant was a responsible one.

APPEARANCES: *P. J. Brennan; R. C. Seddon; H. H. Lomas* (*Budd, Hart & Son*, for *Foysters*, Manchester).

[Reported by Miss M. G. THOMAS, Barrister-at-Law] **[1 W.L.R. 1159**

TRUSTEE: APPLICATION FOR DIRECTIONS: WHETHER TO TAKE PROCEEDINGS AGAINST BENEFICIARIES: RIGHT OF PROPOSED DEFENDANTS TO BE HEARD AND TO SEE EVIDENCE

***In re* Moritz, deceased**

Wynn Parry, J. 3rd November, 1959

Procedure summons.

The executor of a will took out an originating summons, to which all the residuary beneficiaries under the will were defendants, asking the court for directions whether certain proceedings should be taken against two of the beneficiaries. The proposed defendants were supplied with copies of the affidavits filed on the originating summons but not with copies of the exhibits thereto. An application was made by those defendants for an order on the executor's solicitors to supply them with copies of certain of the exhibits.

WYNN PARRY, J., said that the application of the proposed defendants was that at that stage they ought to be furnished with copies of the exhibits, in order to be put in a position to argue before the court whether or not the executor should be allowed to proceed with the action against them as to which the executor sought directions. Speaking for himself, so far as he knew, it had been the practice of this court over a great many years that, where application was made by a trustee for directions from the court as to whether or not proceedings should be brought against defendants, those defendants were not entitled to be heard upon that application. His attention had been drawn to the case of *In re Kay's Settlement; Broadbent* v. *MacNab* [1939] Ch. 329, where the court had decided that proceedings should not be brought. That was a case in which it appeared clearly that there was no dispute as to the evidence. That appeared to him to be quite a different case from the present. His attention had also been drawn to *In re Hinchliffe* [1895] 1 Ch. 117, in which the Court of Appeal had laid down as a general rule that, if a document was made an exhibit to an affidavit, any person who had the right to take copies of the affidavit had a similar right in the case of the exhibits also. With that proposition one could not quarrel; but it did not deal with the practice in chambers in the Chancery Division. It was the practice in that Division that where a trustee found he was compelled to ask for the directions of the court whether certain proceedings should be taken, the parties against whom the proposed relief was sought should not be present in chambers when the matter was debated, and they should not be furnished with the evidence on which the court was asked to act.

APPEARANCES: *A. J. Balcombe* (*Kingsford, Dorman & Co.*, for *Dawes & Co.*, Kingston-upon-Thames); *John L. Knox* (*Wild, Collins & Crosse*).

[Reported by Miss V. A. MOXON, Esq., Barrister-at-Law] **[3 W.L.R. 939**

Queen's Bench Division

CUSTOMS AND EXCISE: FORFEITURE: GOODS IMPORTED DUTY-FREE FOR USE OF AMERICAN SERVICEMEN

Schneider *v.* Dawson

Lord Parker, C.J., Ashworth and Hinchcliffe, JJ.
22nd October, 1959

Appeal by case stated.

The appellant, a British civilian, bought from United States servicemen cigars and spirits, which had been imported free of duty for the use of American servicemen, and kept them for his own use. Later, desiring to buy a further supply of cigars, he met a serviceman by appointment. The latter had in his possession 2,420 cigars, imported duty-free as above, which he told the appellant he intended to sell. He asked the appellant to look after the cigars and the appellant transferred them to his car. It was arranged that the appellant should buy as many of the cigars as he wished, and shortly afterwards the appellant extracted 100, intending to give them to a customer. Before he was able to do so, he was arrested and charged with knowingly and with intent to defraud Her Majesty of the duty payable thereon being concerned in keeping goods, namely the cigars and spirits first described above, which were chargeable with a duty which had not been paid; and with the like knowledge and intent, being concerned in dealing with the 2,420 cigars, which were chargeable with a duty which had not been paid; in each case contrary to s. 304 of the Customs and Excise Act, 1952. He was convicted upon both charges and fined. He appealed.

ASHWORTH, J., reading the judgment of the court, said that it had been contended that, since the goods were imported under an agreement between the British and United States Governments, s. 257 of the Customs and Excise Act, 1952, applied and provided the sole penalty for misuse of the goods, namely, forfeiture; but in their lordships' judgment the provisions of s. 304 of the Act were applicable, for that section began with the words: "Without prejudice to any other provision of this Act . . ." It had also been contended that it had not been established that duty had become payable on the goods at the material times. The phrase "chargeable with a duty which has not been paid" had been substituted by the Act of 1952 for the word "uncustomed," but this had not altered the principle, stated in *M'Queen* v. *M'Cann* [1945] S.C. (J.) 151, 153, that duty became payable when goods imported duty-free under an arrangement passed into the hands of some person not privileged under the arrangement. Accordingly, duty had become payable on all the goods, in the case of the 2,420 cigars at least from the moment at which the appellant had placed them in his car on the footing that he could buy as many as he wanted and return the balance. Furthermore, this conduct clearly amounted to "dealing with" the cigars. There was ample evidence of an intent to defraud. The appeal would be dismissed.

APPEARANCES: *John Hall* (*Judge & Priestley*); *J. R. Cumming-Bruce* (*Solicitor, H.M. Customs and Excise*).

[Reported by GROVE HULL, Esq., Barrister-at-Law] **[3 W.L.R. 960**

OBITUARY

Mr. WILLIAM GEORGE BARRENGER, solicitor, of Hornsey, died on 22nd November, aged 92. He was admitted in 1916.

Mr. GEORGE A. BRIGHOUSE, solicitor, of Ormskirk, died on 20th November, aged 79. He was admitted in 1911.

Mr. FREDERICK BUTLER BRIGGS, solicitor, of Chesterfield, died on 14th November, aged 49. He was admitted in 1954.

Mr. CHARLES VINCENT BURGESS, solicitor, of London, died on 21st November, aged 62. He was admitted in 1934.

Major ERIC CLARKE, retired solicitor, of Cranbrook, Kent, died on 19th November, aged 84. He was admitted in 1901.

Mr. S. P. GUNN, solicitor, of Abertillery, died on 19th November, aged 77. He was admitted in 1907.

Mr. THOMAS CHARLES KING, solicitor, of London, died on 24th November, aged 68. He was admitted in 1919.

Mr. GEORGE P. MEDLICOTT, solicitor, of Folkestone, died on 18th November, aged 70. He was admitted in 1910.

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

A. Progress of Bills

Read First Time :—

Atomic Energy Authority Bill [H.C.] [26th November.
Marriage (Enabling) Bill [H.L.] [25th November.

To enable a person to marry certain kin of the spouse whom such person has divorced.

Matrimonial Proceedings (Magistrates' Courts) Bill [H.L.] [25th November.

To amend and consolidate certain enactments relating to matrimonial proceedings in magistrates' courts and to make in the case of other proceedings the same amendments as to the maximum weekly rate of the maintenance payments which may be ordered by a magistrates' court as are made in the case of matrimonial proceedings.

Mr. Speaker Morrison's Retirement Bill [H.C.] [25th November.
Post Office and Telegraph (Money) Bill [H.C.] [26th November.
Water Officers Compensation Bill [H.L.] [25th November.

To amend the law relating to compensation for officers and servants of water undertakers affected by orders under the Water Act, 1945, or by combinations or orders under the Water (Scotland) Act, 1946.

Read Second Time :—

Expiring Laws Continuance Bill [H.C.] [26th November.
Marshall Scholarships Bill [H.C.] [26th November.
Radio-active Substances Bill [H.L.] [24th November.

Read Third Time :—

Aberdeen Harbour Order Confirmation Bill [H.L.] [25th November.
Clyde Navigation Order Confirmation Bill [H.L.] [25th November.

B. Questions

Prosecutions under the Street Offences Act, 1959

Earl Bathurst said that, during the period from 16th August to 15th November, the number of prosecutions in the Metropolitan Police District for offences against s. 1 of the 1959 Act was 464. In the corresponding period of three months in 1958, the number of prosecutions for similar offences was 4,318. [25th November.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Cotton Industry (Compensation for Redundancy) Bill [H.C.] [25th November.

To provide for the interpretation and enforcement of an agreement providing compensation for redundancy in the cotton industry made between employers and workmen in August, 1959 ; and for purposes connected therewith.

Game Laws (Amendment) Bill [H.C.] [25th November.

To make better provision for the prevention of poaching.

Highlands and Islands Shipping Services Bill [H.C.] [27th November.

To authorise the Secretary of State to assist persons wholly or mainly concerned with the provision of sea transport services serving the Highlands and Islands ; and for purposes connected with the matter aforesaid.

Read Second Time :—

Abandonment of Animals Bill [H.C.] [27th November.
Clean Rivers (Estuaries and Tidal Waters) Bill [H.C.] [27th November.
Coal Industry Bill [H.C.] [23rd November.
Commonwealth Scholarships Bill [H.C.] [25th November.
Judicial Pensions Bill [H.C.] [24th November.
Pawnbrokers Bill [H.C.] [27th November.
Wages Arrestment Limitation (Amendment) (Scotland) Bill [H.C.] [27th November.

B. Statement

Company Law (Committee of Inquiry)

Mr. Reginald Maudling said that Lord Jenkins had accepted his invitation to act as chairman of a committee of inquiry to be set up to examine company law. The committee's terms of reference [set out on p. 951, *ante*] would cover the general field of the creation, operation and dissolution of companies, the protection of the public in their capacity as shareholders and creditors and the regulation of dealers in securities. [26th November.

STATUTORY INSTRUMENTS

Argyll County Council (Abhainn Achnacree and Dubh Loch Beag) Water Order, 1959. (S.I. 1959 No. 1939.) 5d.

Argyll County Council (Allt Cuil A Chaoruinn, Laglingarten) Water Order, 1959. (S.I. 1959 No. 1937.) 5d.

Designs (Amendment) Rules, 1959. (S.I. 1959 No. 1924.) 4d. See p. 965, *post*.

Felixstowe and District Water Order, 1959. (S.I. 1959 No. 1948.) 5d.

Import Duties (General) (No. 10) Order, 1959. (S.I. 1959 No. 1957.) 4d.

Liverpool-Leeds-Hull Trunk Road (Boot and Shoe Inn Diversion and Link Roads) Order, 1959. (S.I. 1959 No. 1933.) 5d.

Liverpool-Leeds-Hull Trunk Road (Boot and Shoe Inn and Other Diversions) (Variation) Order, 1959. (S.I. 1959 No. 1934.) 4d.

London (Waiting and Loading) (Restrictions) (Amendment) (No. 3) Regulations, 1959. (S.I. 1959 No. 1942.) 7d.

London Traffic (Prescribed Routes) (Stepney) Regulations, 1959. (S.I. 1959 No. 1941.) 4d.

Ministry of National Service (Dissolution) Order, 1959. (S.I. 1959 No. 1970.) 5d.

Draft **Miscellaneous Mines** (Explosives) Regulations, 1959. 8d.

Motor Vehicles (Construction and Use) (Amendment) Regulations, 1959. (S.I. 1959 No. 1936.) 8d.

Nigeria (Constitution) (Amendment No. 4) Order in Council, 1959. (S.I. 1959 No. 1981.) 10d.

Nigeria (Offices of Governor-General and Governors) (Amendment No. 3) Order in Council, 1959. (S.I. 1959 No. 1982.) 5d.

Police (Scotland) Amendment (No. 2) Regulations, 1959. (S.I. 1959 No. 1917.) 5d.

Rules of the Supreme Court (No. 2), 1959. (S.I. 1959 No. 1947.) 5d.

These rules make provision for applications and appeals to the High Court under ss. 31 and 32 of the Town and Country Planning Act, 1959.

Service Departments Supply (No. 2) Order, 1959. (S.I. 1959 No. 1975.) 5d.

Somaliland (Constitution) (No. 2) Order in Council, 1959. (S.I. 1959 No. 1983.) 7d.

Stopping up of Highways Orders, 1959 : —

County of the Isle of Wight (No. 2). (S.I. 1959 No. 1935.) 5d.

County of Worcester (No. 9). (S.I. 1959 No. 1920.) 5d.

Mullaghmore, County of Londonderry (Northern Ireland). (S.I. 1959 No. 1943.) 5d.

Superannuation Rules, 1959 :—

British Council and Civil Service (Transfer). (S.I. 1959 No. 1922.) 5d.

Imperial Institute and Civil Service (Transfer). (S.I. 1959 No. 1923.) 5d.

Local Government, Social Workers and Health Education Staff (Interchange) (Scotland). (S.I. 1959 No. 1916.) 8d.

Trade Marks (Amendment) Rules, 1959. (S.I. 1959 No. 1925.) 5d. See p. 965, *post*.

Visiting Forces Act (Application to Colonies) (Amendment No. 2) Order, 1959. (S.I. 1959 No. 1979.) 4d.

Wages Regulation (Rubber Proofed Garment) Order, 1959. (S.I. 1959 No. 1938.) 8d.

Weights and Measures (Amendment No. 7) Regulations, 1959. (S.I. 1959 No. 1926.) 4d.

SELECTED APPOINTED DAYS

November

20th Ministry of National Service (Dissolution) Order, 1959. (S.I. 1959 No. 1970.)

27th Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) (Amendment) Order in Council, 1959. (S.I. 1959 No. 1976.)

30th Rules of the Supreme Court (No. 2), 1959. (S.I. 1959 No. 1947.)

December

1st Factories Act, 1959 (Commencement No. 1) Order, 1959. (S.I. 1959 No. 1877.) Sched. I only. See p. 947, *ante*.

BOOKS RECEIVED

Introduction to the Study of the Law of the Constitution. Tenth Edition. By A. V. DICEY, K.C., Hon. D.C.L., of the Inner Temple, Barrister-at-Law, with an introduction by E. C. S. WADE, Q.C., M.A., LL.D., F.B.A. pp. cxcviii and (with Index) 535. 1959. London: Macmillan & Co., Ltd. £1 15s. net.

Introduction to Jurisprudence with selected texts. By DENNIS LLOYD, M.A., LL.D., of the Inner Temple, Barrister-at-Law. pp. xxiii and (with Index) 482. 1959. London: Stevens & Sons, Ltd. £2 5s. net.

Elliott's Legal Forms. (Formerly Juta's Legal Forms.) Fourth enlarged edition in English and Afrikaans. By R. C. ELLIOTT. Original translations revised and new translations by J. J. BASSON, B.Comm., LL.B. pp. xiii and 295. 1959. Johannesburg: Juta & Co., Ltd. Agents in the U.K.: Sweet & Maxwell, Ltd. £4 8s. net.

Government, Law and Courts in the Soviet Union and Eastern Europe. Volumes 1 and 2. General Editors: VLADIMIR GSOVSKI and KAZIMIERZ GRZYBOWSKI. pp. xxxii and xv and (with Index) 2067. 1959. London: Stevens & Sons, Ltd.; The Hague: Mouton & Co. N.V. £8 8s. net.

Ranking, Spicer and Pegler's Executorship Law and Accounts. 1959 Supplement to the Nineteenth Edition. By H. A. R. J. WILSON, F.C.A. pp. 5. 1959. London: H. F. L. (Publishers), Ltd. 2s. 6d. net.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all

Estate Agent's Commission

Q. Having instructed *B & Co.*, a firm of estate agents, to find a purchaser for his house, *A* proceeded to look for a business to purchase. Ultimately *B & Co.*, as agents for *C*, offered *C's* business to *A* and *A* agreed to buy it. During the negotiations for the sale of the business *C* told *A* that he was looking for a house to purchase. *A* offered to sell his house to *C* and ultimately *C* agreed to buy it. There were separate contracts for the sale of the house and the sale of the business but with the same completion date. *B & Co.* did not at any time put forward *C's* name to *A* as a possible purchaser for the house nor did *A* at any time intimate to *B & Co.* that he would only sell his house to somebody who had a business for sale. All the negotiations for the sale of the house were carried out between *A* and *C* direct. On the other hand, it was only the introduction of *A* to *C* for the purchase of the business which led to *A* offering to sell his house to *C*. Is *A* liable to pay commission to *B & Co.* in respect of the sale of the house to *C*?

A. This question raises a most interesting point. It must be stressed in the first place that no wholly satisfactory answer can be given without having an opportunity of seeing the precise terms of the instructions given by *A* to *B & Co.* The answer is, therefore, based simply on the facts quoted and the inferences to be drawn from them. *C* was introduced to *A* by *B & Co.* as the vendor of a business which *A* might buy. This introduction was made as agents to *C* and not in their character as agents of *A*. The purchase of *A's* property which *B & Co.* were instructed to sell was not directly but indirectly caused by the introduction of *C* as the vendor of the business. *B & Co.* were not an efficient cause of the sale of the house; indeed, it might be said they were the inefficient cause of the sale of the house in that quite clearly they were in contact with someone, i.e., *B*, whom they could have introduced to *A* as a possible purchaser of his house but had failed to do so. The mere fact that advantage is taken of information incidentally received from an agent does not entitle the agent to commission (see *Coles* v. *Enoch* [1939] 3 All E.R. 327). Moreover, the introduction of someone in one capacity, and for one purpose, does not amount to a performance of a mandate to introduce someone for a different purpose, e.g., the introduction of someone as an agent who might find a purchaser gives no right to commission if that person changes his character in the process and becomes the actual purchaser (see *Barnett* v. *Isaacson* (1888), 4 T.L.R. 645).

No Assent by Personal Representative in Own Favour

Q. A died on 20th April, 1938, intestate, possessed of a small freehold house upon which there was a mortgage. His widow, *B*, herself obtained a personal grant of letters of administration on 7th June, 1938, and later discharged the mortgage the receipt upon which showed that *B* paid off the mortgage as administratrix of *A*. The gross value of the estate was £378, and *B* was therefore *beneficially* entitled. *B* administered the estate, but did not execute any assent vesting the house in herself as absolute owner. *B* died intestate on 11th January, 1959, leaving three children, one of whom will take a grant of administration to her estate. In the absence of an assent by *B* to herself in the estate of *A*, is a grant *de bonis non* also required to the estate of *A*, to enable the administrator of *B* to deal with the house either by sale or by way of family arrangement between the three children of *B*, which latter is in fact desired?

A. The view generally accepted is that a written assent is not essential where personal representative and beneficiary are the same person. In such circumstances (although judicial authorities are not conclusive) we believe that most solicitors accept title based on an implied assent. The problem is discussed in Emmet on Title, 14th ed., vol. 2, p. 474, and in the first supplement thereto, p. 92. *B* showed an intention to act as administratrix at the time of discharge of the mortgage. If, however, this was soon after *A's* death and since then she has held possession of the house beneficially for a number of years, we think an assent in her favour would be implied. On this basis a grant *de bonis non* to the estate of *A* is not necessary.

NOTES AND NEWS

TRADE MARKS AND DESIGNS: ADMITTANCE OF PUBLIC TO CERTAIN HEARINGS

On 20th November, the Board of Trade laid before Parliament rules made under the Trade Marks Act, 1938, and the Registered Designs Act, 1949, providing for the admittance of the public to the hearing of certain trade marks and designs matters by the registrar. The new amendments require the registrar to hear in public any dispute between two or more parties in connection with a trade mark or an application to register a trade mark, or any dispute relating to a registered design, unless, after consultation with the parties represented at the hearing, he otherwise directs. Hitherto, the public have had no right of admisison to such hearings. In order to give the parties notice of the change in practice, the new rules will not come into operation until 22nd February, 1960. Copies of the new rules can be obtained from H.M. Stationery Office, Kingsway, London, W.C.2, and branches. They are the Trade Marks (Amendment) Rules, 1959 (S.I. 1959 No. 1925), 5d., and the Designs (Amendment) Rules, 1959 (S.I. 1959 No. 1924), 4d.

H.M. FACTORY INSPECTORATE DIRECTORY

Information about the divisions and districts of H.M. Factory Inspectorate in Great Britain was published by the Ministry of Labour on 25th November (H.M. Factory Inspectorate Directory, H.M.S.O., 3s.). This new publication arises from the reorganisation and re-naming of the divisions which came into force on 3rd March, 1958. It is intended as a handy ready-reference book for all those in industry who seek advice or information concerning matters which come within the jurisdiction of the Factory Inspectorate. In an explanatory note the booklet states that for the purposes of the organisation of the Inspectorate Great Britain is divided into twelve English divisions, Scotland and Wales (with Monmouthshire). Details are given of the area covered by each district in a division, together with the address and telephone number of the divisional and district offices.

INDEX TO FOREIGN LEGAL PERIODICALS

The American Association of Law Libraries is to publish, for the first time, an index to foreign legal periodicals. The index will be published in three quarterly issues. At the end of each of the first four years, an annual volume cumulating the contents of the three quarterly issues plus new matter for the last quarter will be issued. Later, a five-year cumulation will replace all the earlier volumes.

NEW PROSECUTING COUNSEL

The Attorney-General has made the following appointments at the Central Criminal Court: Mr. J. M. G. GRIFFITH-JONES to be first senior prosecuting counsel to the Crown; Mr. E. J. P. CUSSEN to be second senior prosecuting counsel; Mr. J. H. BUZZARD to be third senior prosecuting counsel; Mr. S. A. MORTON to be first junior prosecuting counsel; Mr. J. C. MATHEW to be second junior prosecuting counsel; Mr. M. CORKREY to be third junior prosecuting counsel; and Mr. J. S. STREETER to be junior counsel for the Crown in appeals from metropolitan magistrates to London Sessions, and prosecuting counsel to the Crown at the North London Sessions.

LORD BIRKETT ON PODOLA

Parallels with the Podola case, a concise and lucid summary of it by Lord Birkett, and his general observations on insanity and the law in this country will contribute to an exceptionally interesting "Verdict of the Court" feature in the B.B.C. Home Service on Friday, 11th December, at 7 p.m. The reconstructed trial to be heard is that of the Rev. John Selby Watson, a retired schoolmaster, who was charged at the Old Bailey in January, 1872, with the murder of his wife.

DEVELOPMENT PLANS

PROPOSALS FOR ALTERATIONS OR ADDITIONS SUBMITTED TO MINISTER

Title of plan	Districts affected	Date of notice	Last date for objections or representations
County Borough of Brighton	County Borough of Brighton	30th October, 1959	23rd December, 1959
City and County of the City of Exeter	City and County of the City of Exeter	24th September, 1959	7th November, 1959
Flintshire County Council	St. Asaph Rural District	5th November, 1959	31st December, 1959
Gloucestershire County Council	Cirencester Urban District	13th November, 1959	31st December, 1959
Huntingdonshire County Council	Godmanchester, Huntingdon and St. Ives Boroughs; Old Fletton, Ramsey and St. Neots Urban Districts; Huntingdon, Norman Cross, St. Ives and St. Neots Rural Districts	18th September, 1959	6th November, 1959
Ipswich County Borough Council	County Borough of Ipswich	6th November, 1959	21st December, 1959
Lancashire County Council	Abram, Ashton-in-Makerfield, Ince-in-Makerfield and Hindley Urban Districts	18th September, 1959	15th November, 1959
	Huyton-with-Roby and Prescot Urban Districts; Whiston Rural District	18th September, 1959	9th November, 1959
London County Council	St. Marylebone Borough	28th October, 1959	15th December, 1959
Middlesex County Council	Hayes and Harlington Urban District	23rd September, 1959	7th November, 1959
Montgomeryshire County Council	Llanidloes Borough	13th November, 1959	28th December, 1959
Somerset County Council	Keynsham Urban District	11th November, 1959	31st December, 1959
West Sussex County Council	Worthing Borough	18th November, 1959	31st December, 1959
County Borough of Wigan	County Borough of Wigan	3rd November, 1959	22nd December, 1959
Worcestershire County Council	Bewdley, Droitwich, Halesowen, Kidderminster and Stourbridge Boroughs; Bromsgrove, Redditch and Stourport-on-Severn Urban Districts; Bromsgrove, Droitwich and Kidderminster Rural Districts	13th November, 1959	31st January, 1960

AMENDMENTS BY MINISTER

Title of plan	Districts affected	Date of notice	Last date for applications to High Court
County Borough of Bolton		20th October, 1959	6 weeks from 20th October, 1959
City and County Borough of Carlisle		25th September, 1959	6 weeks from 25th September, 1959
Cornwall County Council	Looe Urban District; part of Liskeard Rural District	12th November, 1959	6 weeks from 20th November, 1959
Isles of Scilly County Council		23rd November, 1959	6 weeks from 23rd November, 1959
Lancashire County Council	Ince-in-Makerfield Urban District	2nd October, 1959	6 weeks from 2nd October, 1959
London County Council	Bermondsey Borough	11th September, 1959	6 weeks from 11th September, 1959
Middlesex County Council	Friern Barnet Urban District; Southgate Borough	14th September, 1959	6 weeks from 15th September, 1959
North Riding of Yorkshire County Council	St. Thomas Street, Scarborough	25th September, 1959	6 weeks from 25th September, 1959
West Sussex County Council	Worthing Borough	23rd September, 1959	6 weeks from 23rd September, 1959

Approval by Minister

Title of plan	Date of notice	Last date for applications to High Court
Devon County Council	27th October, 1959	6 weeks from 30th October, 1959
Leicester County Council	9th October, 1959	6 weeks from 9th October, 1959
Soke of Peterborough County Council	11th September, 1959	6 weeks from 11th September, 1959
County Borough of Warrington	30th October, 1959	6 weeks from 30th October, 1959

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

The following notices of the preparation of maps and statements under the above Act, or of modifications to maps and statements already prepared, have appeared since the tables given in previous volumes and at pp. 456 and 738, *ante* :—

Draft Maps and Statements

Surveying Authority	Districts covered	Date of notice	Last date for receipt of representations or objections
Breconshire County Council	Area of the council: further modifications to draft map and statement of 12th June, 1959	14th October, 1959	1st December, 1959
Carmarthenshire County Council	Carmarthen and Llanelly Rural Districts	8th September, 1959	18th January, 1960
Cornwall County Council	Looe Urban District: modifications to draft map and statement of 12th July, 1955	30th October, 1959	30th November, 1959
Cumberland County Council	Penarth Urban District; Alston-with-Garrigill, Border, Penrith and Wigton Rural Districts: modifications to draft map and statement of 9th September, 1953	12th November, 1959	16th December, 1959
Derbyshire County Council	South East Derbyshire Rural District; Heanor and Long Eaton Urban Districts: modifications to draft map and statement of 28th May, 1953	26th November, 1959	2nd January, 1960
Devon County Council	Tiverton Borough and Rural District: modifications to draft map and statement of 15th April, 1958	27th October, 1959	30th November, 1959
Dorset County Council	Dorchester Rural District: further modifications to draft map and statement of 28th March, 1958	26th June, 1959	25th July, 1959
Merioneth County Council	Area of the council: modifications to draft map and statement of 18th December, 1952	16th October, 1959	30th November, 1959
Nottinghamshire County Council	Newark Borough and Rural District: modifications to draft map and statement of 8th October, 1956	17th November, 1959	24th December, 1959
	Basford Rural District; Beeston and Stapleford Urban District: modifications to draft map and statement of 12th July, 1956	17th November, 1959	24th December, 1959
Somerset County Council	Wellington Urban and Rural Districts: modifications to draft map and statement of 19th October, 1955	4th September, 1959	3rd October, 1959
Staffordshire County Council	Area of the council: further modifications to draft map and statement of 14th January, 1958	6th November, 1959	6th January, 1960
Warwickshire County Council	Shipston-on-Stour Rural District: modifications to draft map and statement of 1st March, 1954	22nd October, 1959	23rd November, 1959
West Sussex County Council	Area of the council: further modifications to draft map and statement of 10th June, 1958	11th September, 1959	30th October, 1959

Provisional Maps and Statements

Surveying Authority	Districts covered	Date of notice	Last date for applications to quarter sessions
Cumberland County Council	Whitehaven Borough; Ennerdale and Millom Rural Districts	11th November, 1959	9th December, 1959
Devon County Council	Totnes Borough; Brixham, Buckfastleigh and Paignton Urban Districts; Totnes Rural District	10th November, 1959	8th December, 1959
Huntingdonshire County Council	Area of the council	19th November, 1959	17th December, 1959
Northumberland County Council	Hexham Rural District	22nd October, 1959	19th November, 1959
Staffordshire County Council	Bilston, Wednesbury and Tipton Boroughs; Darlaston, Willenhall, Coseley and Brownhills Urban Districts	23rd October, 1959	20th November, 1959
Warwickshire County Council	Royal Leamington Spa and Warwick Boroughs; Atherstone, Southam and Tamworth Rural Districts	23rd October, 1959	20th November, 1959
West Riding of Yorkshire County Council	Ossett Borough; Cudworth, Darfield, Darton, Denby Dale, Dodworth, Featherstone, Hemsworth, Horbury, Hoyland Nether, Normanton, Penistone, Rothwell, Royston, Stanley, Stocksbridge, Wombwell and Worsborough Urban Districts; Hemsworth, Penistone, Wakefield and Wortley Rural Districts	6th October, 1959	3rd November, 1959
West Sussex County Council	Chanctonbury Rural District	14th September, 1959	16th October, 1959

Definitive Map and Statement

Surveying Authority	Districts covered	Date of notice	Last date for applications to the High Court
Somerset County Council	Taunton Borough and Rural District	25th September, 1959	6th November, 1959

PRACTICE NOTE

PROBATE, DIVORCE AND ADMIRALTY DIVISION

The Welfare Officer in Custody Cases

When both parties to custody proceedings are agreed that a reference to the welfare officer will be of assistance to the judge, application by consent may be made by either party to the registrar of the day, who, on being satisfied that there is sufficient information for the welfare officer about the points at issue in the affidavits, if any, or other documents, may refer the matter to the welfare officer for his investigation before the proceedings come before the judge.

Compton Miller,
Registrar.

19*th November*, 1959.

Society

The United Law Debating Society announced recently the election of officers for the ensuing year: secretary: Mr. F. W. Rhodes, Claims Commission, War Office, York House, Kingsway, W.C.2; assistant secretary: Mr. A. L. Gooch, 403 Bury Street West, London, N.9.

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